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HISTORICAL SKETCHES

OF

CIVIL LIBERTY;

FROM THE

REIGN OF HENRY THE VIIth

TO THE

ACCESSION OF THE HOUSE OF STUART;

WITH AN ACCOUNT OF THE

ANTIQUITY, USE, AND DUTY, OF

JURIES:

IN WHICH ARE INTERSPERSED

Several INTERESTING PARTICULARS, illuſtrative of the LIBERTIES of the SUBJECT.

THAT CAUSE IS JUST WHICH DEFENDS THE LAWS.

Lord Somers.

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HIS

LONDON:

Printed for G. G. J. and J. ROBINSON, PATER-NOSTER-ROW.

M,DCC,LXXXVIII.

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Rec. Nov. 17, 1902.

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M DCC LXXXVIII.

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PREFACE.

TO expoſe the illegal exerciſe of authority, to ſhew tyranny in its proper colours, and to urge the propriety of an equal and impartial diſtribution of the laws, have been conſidered as indiſpenſibly neceſſary to the wellfare of all free governments.—Encouraged with the idea, that even my poor labours might be of ſome utility, at leaſt, to thoſe whoſe purſuits have denied them the peruſal of more enlightened reading, I engaged in this publication; in which I have introduced a ſhort account of ſeveral oppreſſions and illegal proceedings which fell within my own knowledge; as well as of thoſe communicated to me by gentlemen, whoſe veracity I had no reaſon to queſtion.

It is however under an impreſſion of the greateſt reverence and diffidence, that I venture to ſubmit it to the world: being truly conſcious, though too late, of having fallen into an error rather common with ſome authors—that of publiſhing their works before they had undergone a poliſh and correction fit to render them worthy of preſentation to the public. But however defective in ſtile and arrangement the book may appear to be, it has been my ſtudy in it to adhere to truth; without which no hiſtorical compoſition deſerves to be read; and, I flatter myſelf, the recent occurrences treated of, are ſo well known, and ſo faithfully related, that I ſhall not dread the cenſure of thoſe on whoſe conduct I have preſumed to animadvert.

In England, the free diſcuſſion and reprehenſion of the abuſe of power, is abſolutely requiſite to the preſervation of freedom; and, happily for us, the preſs is no longer under the controul of licencers appointed by the crown; ſo that the tyrant is made to tremble at its ſcourge, and to conduct himſelf with circumſpection from its ſtrictures.—Yet the times are ſuch, that even the conviction of a military governor of oppreſſion, ſo far from operating to his diſadvantage with ſome miniſters, has helped to procure him, perhaps, a more lucrative appointment; and armed him again with power to tread upon the rights of the ſubjects, and to enrich himſelf with their ſpoils.

Every hiſtorian ſhould dare to ſpeak any truth; nor ſhould he dare to utter a falſehood. Truth carries about it a charm, which in theſe days cannot eaſily be injured; for the more it is tried, the brighter it will always appear, as the contrary maxim will ever hold as to falſehood; but before the conſtitution had arrived at its preſent purity, it was ſo little regarded that the hands of tyranny were often extended againſt the aſſertors of it. However, it is to be recollected, that as often as any man was depreſſed, who diſintereſtedly embraced the truth, as often did it redound to his glory, and brought diſhonour, and ſometimes puniſhment upon them.

The affairs of Scotland, which I have ſlightly touched upon in the following ſheets, (the nature of our plan not permitting us, at this time, to enlarge upon them) are now become inſeparably interwoven with thoſe of England; therefore, by the union of theſe two ancient kingdoms, an Engliſhman ought to promote, as much as lies in his power, the happineſs and ſecurity of the ſiſter kingdom. It is his intereſt to do it; but how will his indignation be

raiſed

raiſed on being told, that the greater part of the inhabitants in that part of the iſland, are at this moment deprived of many of the inherent and beſt privileges of freemen; while the choiceſt bleſſings of liberty are enjoyed by every Briton reſiding on the South-ſide of the Tweed.

There is no ſuch thing exiſts in Scotland, which deſerves the name of a free repreſentation of the people, in any ſenſe of the word; and from the beginning of that monarchy to the time of Queen Anne, they remained in the moſt humiliating ſtate of ſlavery, from the joint attacks of kingly and ariſtocratical power. So deſpotic was the Scottiſh government, that Sir David Dalrymple in his Remarks on the Hiſtory of Scotland, chap. xii. tells us, James the Sixth ordained one Peter Nairne, charged with an offence, not capital, to be tried; and, if found guilty, to be executed.

The nobility and landed gentlemen have ſhamefully engroſſed into their own hands the whole repreſentation of the Commons of Scotland, and ſeem determined, as far as they can, to maintain that privilege, in deſpite of the laws of common ſenſe, and the conſtitutional rights of the ſubject.—This abuſe of the ariſtocracy, owes its encreaſe to a declaration of James the Sixth, in 1587, by which thoſe *only*, who held their lands of the king, are entitled to elect, or be elected. Hence the greateſt eſtate of a heritor, or *vaſſal*, as he is modeſtly called, (and this is a numerous and opulent body) who holds his lands to himſelf and his *heirs for ever*, is of no avail or importance, if there is a ſuperior between the holder and the king, or prince; notwithſtanding the heritor or his tenant pays the land-tax, and all parochial and other

dues and aſſeſſments; while the feudal ſuperior pays nothing. The corrupted traffic introduced by the diſtinction between the property and ſuperiority is obvious to every body; inſomuch, that the ſuperior of a large eſtate, whether he has the property or not, can create as many *votes* as he is able to produce of ſeparate *retours* of forty ſhillings Scots each, or, as the whole valued rent of 1681, when divided by four hundred pounds Scots, will amount to. In conſequence therefore, of colour of law, an ingenious device is practiſed of ſplitting and dividing eſtates by the ſuperior; whereby ſham qualifications are created, which he deſtributes among his friends and dependants; though it never could be the intention of the legiſlature, that a ſuperior ſhould be followed by a train of non-entities, or confidential voters of his own making. In this way, however, the nobility of Scotland who have extenſive eſtates, and often more extenſive ſuperiorities, may, and commonly do, carry county elections, notwithſtanding their repreſentation, or ſeat, is in another branch of the legiſlature. There are, nevertheleſs, in Scotland, ſome noblemen, who abhor, as their advocates ſay, this practice, as iniquitous and diſhonourable; yet, who find themſelves under the neceſſity of having recourſe to it, in their own defence. But this is a frivolous apology indeed; and ought never to be uſed by any nobleman pretending to honour, or conſcience; in as much as he is forbidden by *law* to interpoſe his influence in the election of members to repreſent the commons. Shall a man who knows another has committed the groſs crime of ſubornation of perjury, willfully run into the ſame turpitude? True honour diſdains the thought. The practice, however, is grown ſo common, that lords and gentlemen, of no conſcience at all, can find enough of tools of the inferior order of the law, who will come forward at their

their call, with aſtoniſhing effrontery, to ſwear to a real qualification, to vote for a member of parliament, on the ſole ground of a truſt piece of parchment, and no better pretenſion. I once challenged one of theſe fictitious voters, by aſking him why he could receive a reward, or the promiſe of it, at the immenſe expence of the ſacrifice of all moral ſentiment? To this he cooly made anſwer, "Sir, it is the cuſtom of this country; and my lord, who gave me the qualification, writes to me for my vote and intereſt, with as much politeneſs as if I had the moſt unqueſtionable right to grant my ſuffrage."

Such tame inſtruments of ſuborners of perjury, it would ſeem, ſet a greater value on preſent profit, or the courtly, but treacherous ſmiles of the great, than upon a good and laſting fame; without, perhaps, conſidering, that there is nothing in the ſhort ſpan of life, which can be an equivalent to any man for becoming a raſcal.

The remedy which bids faireſt to cure this evil ſeems to be, that a determined eſtate of real yearly income of forty ſhillings a year, no matter of whom holden, ſhould be deemed ſufficient to qualify every legal man to vote for a repreſentative in parliament for the counties, upon the uſual oath. In that caſe, all men would prefer purchaſing a qualification, to the riſque of perjury; ſo that this corrupt and contemptible grievance, would ſoon be entirely extirpated. As a people inhabiting the ſame iſland, ſpeaking the ſame language, of nearly the ſame manners and cuſtoms, whoſe intereſts are as ſtrongly blended with thoſe of their ſouthern friends, as, comparatively ſpeaking, the tye of huſband and wife, can make them, and who therefore ought all to be governed by the ſame good

laws;

laws; why not break down all ſuperiorities, and adopt the ſyſtem of electing members of parliament for the counties of Scotland, on the ſame liberal ſcale with the counties of England? But by the preſent unhappy conſtitution of the former, which never had liberty for its object, the wealthy commoner has no ſtimulus to ambition, and can ſeldom feel his conſequence as the member of a free ſtate: beſides the high qualification requiſite to vote at a county election, which being utterly out of the reach of the inferior ranks, proves ſo great a draw-back upon their induſtry, as well as emulation, that they ſeldom think of riſing above the condition of their fathers, and ſeem from a long acquaintance with their own nothingneſs in ſociety, to be content to plod on in humble and unreſiſting obſcurity.—Thus public ſpirit and the *amor patriæ* are almoſt totally extinguiſhed among three-fourths of the people, who are only attached to their county from *intereſt*; and feel not that high ſenſe of independence and political importance, which the participation of power communicates to the ſubjects of a free and equal government.

The mode of election in the boroughs, is equally degrading and deplorable. The magiſtrates and town-councils commonly elect for their parliamentary repreſentatives the younger ſons of noblemen, landed gentlemen, barriſters bankrupt in principle, and unknown in their profeſſion, officers in the army, and men who have acquired fortunes, by the plunder of the inhabitants of the Eaſt. As a previous ſtep to this dignity, the quality of *honorary* burgeſs is before hand beſtowed upon them; whereas the *trading burgeſs*, and ſkillful mercantile man, has a preferable claim to be their delegate to parliament, as poſſeſſing the knowledge to do juſtice to the intereſts of the boroughs. Very worthy men, it has been ſaid, may

poſſibly

poſſibly be found among ſome of thoſe claſſes; though I would wiſh to know how the appellation of *very worthy men*, can be applied to thoſe, who, to obtain a ſeat in parliament, have recourſe to the infamous means of bribery and corruption? Are ſuch characters, who ſtand ſelf-condemned of theſe abominable arts, fit to repreſent commercial and manufacturing cities and towns? Or would the citizens have choſen them upon a free election? No. The education of *all*, and even the *intereſt* of ſome of them, deſtroys the very idea of it.

To give but one inſtance. It is ſurely of high conſequence to a manufacturing town, that proviſions, particularly grain, be cheap, as well as plenty. The landed intereſt however have, of late years, at leaſt, conſidered it as their benefit, that grain ſhould ſell high, in order to raiſe and keep up their rents. Hence the ſchemes of ſhutting the ports againſt importation, and at other times, bounties for exportation, which laſt, is making the public at large *pay*, that proviſions may be dear; and the conſequence of both is, that if the crops fail for one year, as has been lately experienced, there is no ſtore left in the country. Hunger, or importation, at extravagant prices, without almoſt any thing to give in exchange, except the ſmall portion of *hard money*, muſt be the fate of the people.

The cauſe which produces this misfortune, originates from the magiſtrates and town councils of the boroughs. It is a maxim in politics, which is proved by experience, and grounded on an accurate obſervation of human nature, that *governing* men, ought not to hold their power in an abſolute independence of the people *governed*, otherwiſe they will generally diſregard the wellfare of the people, and purſue plans of ſeparate intereſt, or gratifications for themſelves

themſelves and their aſſociates. In all free ſtates, therefore, it has been eſtabliſhed as a fundamental regulation, that the *governors* ſhould be elected by the *governed*, and be accountable to them for their conduct. But the ſad complaint is, that theſe magiſtrates and town councils, commonly conſiſting of about thirty perſons, are not choſen by the community they repreſent, and name their own ſucceſſors in office to perpetuity; though the real electors, in ſome places, amount to more than thirty thouſand. By this glaring abuſe, a junto, or party, have the incontroulable management of all public buſineſs, have the ſole exerciſe of the judicial and magiſterial powers, have the abſolute diſpoſal of the borough revenues, and of all places of truſt and of profit in the gift of the borough. Acting in this capacity, theſe men may, and uſually do, abuſe their power, may embezzle the public revenues, and yet, however odious they may be to the body of the citizens, retain their ſeats in the council, in ſpite of every effort to remove them. Nothing, however, is more deſtructive to a community, than the continuance of authority too long in the ſame hands. It always tempts men to abuſe power; and ſubverts that ſucceſſive change of magiſtracy, which is the fundamental conſtitution of all equal governments, where the whole community ought to have their turns of commanding and obeying.

Thus a few petty tyrants, and deſigning knaves, the Swiſs-guards of place-hunters void of probity and honor, poſſeſs the power, and conſume the revenues of the cities and boroughs; while the opulent and independent citizens and houſekeepers, the real electors, are not only deprived of their birth-rights, and reduced to mere cyphers in the community, but have the melancholy proſpect of ſeeing the ſame tyrannical and ſlaviſh ſyſtem tranſmitted to poſterity.

poſterity. This cruel diſtemper raging in the boroughs, and the county elections managed as above obſerved, how are two millions of ſubjects repreſented by the forty-five members in parliament? Poorly indeed! Many of them have approved themſelves the ſervile and unworthy tools of wicked miniſters; and who, ſo far from guarding the true intereſts of their native country, ſeem to have acted with as little ſhame or principle, as the hypocritical traitors who, for *money*, ſold the unhappy Charles the Firſt. But it is not from them, I conceive, that Scotland is to look up for the protection of her liberties. Governed as that country now is, and always has been, by a ſelfiſh and arbitrary ariſtocracy, (the noble Earl of Buchan, Mr. Dempſter, Mr. Boſwell, and ſome others excepted) ſhe may ſuffer injuries, but can expect no relief from that quarter; and, as her ſafeſt and beſt reſort, muſt appeal to, and confide in the wiſdom and generoſity of the democracy of England. For, to an Engliſhman, whoſe darling object is liberty, which he has maintained at the expence of his beſt blood, with invincible ſpirit and courage, ſuch a ſtate of ſubjection and inſignificance muſt ſurely be ex- extremely offenſive. Feeling for the miſerable condition of their northern neighbours, they will exert themſelves to procure the extenſion of Engliſh laws to them; becauſe by making them feel the conſequence of freemen, they will enjoy the ſupreme ſatisfaction, of not only cementing a reciprocal and indiſſoluble friendſhip between both countries, but for ever extinguiſh that accurſed ſhallow idea, national diſtinction.

The glorious fabrick of the Engliſh conſtitution, when compared to other governments, will certainly appear as far ſuperiour and brilliant to them, as the moon to any of Jupiter's ſatellites; but ſtill, however, the defects in it,

which are viſible and felt, in many inſtances, ſeem ſufficient to convince us, that we muſt not be tempted to think it the work of more than human ſtructure. Diſcerning Engliſhmen are ſo truly ſenſible of it, that there is ſcarcely one of them above the rank of the mere vulgar, who does not exclaim againſt the extravagant influence of the crown—the corrupted ſyſtem of parliamentary election and repreſentation; whence originates the monſtrous grievance of depriving a certain deſcription of ſubjects of their undoubted and untransferrable franchiſes. Theſe ſources of diſcontent are not of a modern date; they ſeem to have kept gradually and imperceptibly encreaſing ever ſince the revolution; and have convinced us, that what the crown formerly loſt in prerogative, is almoſt counter-balanced by the oppoſite extreme of cunning court-influence.

Hence the following claim of an Engliſhman's rights, though coeval with parliaments, and well known and underſtood by moſt, may not perhaps be improper to be here inſerted, for the inſtruction of all Scotſmen, who have not imbibed the noble and incontrovertible maxims it contains, from an ignorance of the democratical ſpirit of the Engliſh conſtitution.

That *every man* of the commonalty (except infants, inſane perſons and criminals) is, of the common right, and by the laws of God, a *freeman*, and entitled to the full enjoyment of *liberty*.

That liberty, or freedom, conſiſts in having an *actual ſhare* in the appointing of thoſe who frame the laws, and who are to be the guardians of every man's life, property, and peace; for the *all* of one man is as dear to him as the *all* of another; and the poor man has an *equal* right, but

more

more need to have repreſentatives in the legiſlature, than the rich one.

That they who have no voice nor vote in the electing of repreſentatives, *do not enjoy* liberty, but are abſolutely *enſlaved* to thoſe who *have* votes, and to their repreſentatives: for to be *enſlaved*, is to have governors whom *other men have ſet over us*, and to be ſubject to laws *made by the repreſentatives of others*, without having had repreſentatives of our own, to give conſent in our behalf.

That *a very great majority* of the commonalty of this realm are denied the privilege of voting for repreſentatives in parliament: and conſequently they are enſlaved to *a ſmaller number*, who do now enjoy this privilege excluſively to themſelves; but who, it may be preſumed, are far from wiſhing to continue in the excluſive poſſeſſion of a privilege, by which their fellow-ſubjects are deprived of *common right*, of *juſtice*, of *liberty*, and which, if not communicated to all, may be the cauſe of the *overthrow of our happy conſtitution*.

That it is *the right* of the commonalty of this realm, to elect a *new* Houſe of Commons once in *every year*, according to ancient and ſacred laws of the land. Becauſe whenever a parliament continues in being for a *longer term*, very great numbers of the commonalty, who have arrived at the years of manhood ſince the laſt election, and *therefore* have a right to be actually repreſented in the Houſe of Commons, are then *unjuſtly deprived* of that right. But to go back to the affairs of Scotland.

It would be a happy circumſtance were the grievances of that country only confined to the abuſe of parliamen-

tary and borough elections; becauſe, the fewer the evils, the eaſier would they be removed. The Supreme Court of Civil Juſtice, the Court of Seſſion, has long been preſented before the tribunal of the public, as a grievance, which claims the firſt redreſs, as being of all other evils the greateſt, and moſt dangerous to the perſons and properties of a numerous deſcription of the community. The very conſtitution of this court, which is compoſed of fifteen judges appointed by the crown, is held to be ſo inimical to freedom, as not, unaptly to be compared to the Star-Chamber, or to a political engine calculated to overawe that part of his Majeſty's dominions. From judges living in a ſmall community, and in the habits of friendſhip with many, and acquainted with *all* the nobility and gentry of the country, what chance can there be to obtain impartial juſtice in ſuch a court, in diſputes between the rich, or great, and the inferior orders of the people?—Yet this is the only ſubſtitute they have for a trial by their peers.

The late learned Dr. Gilbert Stuart, than whom there never appeared a more ſteady friend to the liberties of his native land, and whoſe heart delighted in acts of humanity, has laid open to the world the exceſſive power and practices of that court in pointed terms. "A ſupereminent, a boundleſs juriſdiction, ſays he, is, in fact, claimed by this court, has been exerciſed by it, and is thought to be lodged in it at this hour. It is a conſequence of its powers, that it has ſuſtained itſelf as competent to judge in matters of rank and precedency; yet theſe are the acknowledged objects of another juriſdiction. In queſtions of the peerage, it has determined; yet, theſe are known to appertain to the Houſe of Peers. The judges of the Court of Seſſion, ſays Mr. Erſkine, in his Inſtitute of the

the Law of Scotland, page 44, may, in their enquiries into facts, direct things to be done, or ſteps to be taken, which neither are, nor can be demanded as a point of right. Thus they have an abſolute and inquiſitorial juriſdiction. It has been ſaid, that the law is a hedge and fence around the liberty of the ſubject. But the *nobile officium* of this court can over-leap this hedge and this fence. It can pronounce of a law, that it is in diſuſe, or that it is improper; yet this law may be a ſtatute of the nation and unrepealed. It can look with impudence in the face of an act of parliament, and not only diſpenſe with its powers but contemn them.

To urge that the *nobile officium* belongs to the Court of Seſſion, as a Court of Equity, is to propogate a tenet in every reſpect frivolous. For equity has its rules, as well as law, and depends not on what is called the moral ſenſe, or the conſcience of particular men. It is to make a farce of all juriſprudence, and of all juſtice, to talk of equity as a mere depoſit in the breaſt of a judge, and not as artificial, regular, and ſyſtematic. It is to exalt the dictates and the caprices of individuals, above the wiſdom and experience of ages, above evidence, authorities and rules. It is to advance judges into deſpots, thus to be inveſted with a power above law, and equity. Their feelings, their capacities, their frailties. and their paſſions, are made to come in the place of the principles, and the impartialities of juſtice. This *nobile officium*, is a ſnare for the integrity of the upright ſenator. It is a cover for the wickedneſs of the ſenator who is corrupt. A court with this principle of action, muſt be arbitrary. It may invade whatever is moſt valuable in our rights. It is in a wild hoſtility with our conſtitution. It is a Turkiſh juriſdiction in a country of liberty." Obſervations on the

public

public Law and Conſtitution of Scotland, page 268, 270, 275.

But as if theſe extravagant powers were not ſufficient, to humble and bend the necks of the people ſtill more to the yoke of oppreſſion, a daring attempt was lately made to reduce the number of the Scottiſh judges; in which honourable buſineſs a cunning Scottiſh lawyer afforded his ſtrenuous aſſiſtance. What ſaid the people to this ariſtocratic manœuvre? Are we, who are deprived of that ineſtimable bleſſing, trial by jury, in civil caſes, to have the number of our judges reduced, that they may the more eaſily be led into temptation? The alarum bell being rung, the contrivers of this execrable plot againſt the liberties of their countrymen, ſhrinking under the ſenſe of the danger which hung over their heads, prudently dropt the project, never, I hope, to be revived again.

Admitting the judges to be the moſt upright men in the world, (and for aught I know, they may be ſo, but from what ſhall appear hereafter, they are like other men, not infallible) yet the proceſs of this court, and the delays ariſing from it, are a reproach to the ſacred name of juſtice. For, whoever goes to law in it, is almoſt ſure to be ruined before he can get out of it, eſpecially if he ſhould be oppoſed by a rich adverſary. It is the practice of this court, to allow the parties, whenever they pleaſe, to appeal from day to day, and from court to court, upon queſtions merely of fact; which is a perpetual ſource of obſtinate chicane, delay, and expenſive litigation. "Not many years ago, ſays Sir William Blackſtone, an appeal was brought to the Houſe of Lords, from the Court of Seſſion in Scotland, in a cauſe between Napier and Macfarlane. It was inſtituted in March 1745, and, (after many

many interlocutory orders and ſentences below, appealed from and reheard as far as the courſe of proceedings would admit) was finally determined in April 1749; the queſtion being only on the property of an ox, adjudged to be of the value of three guineas. No pique, or ſpirit of party, could have made ſuch a cauſe, in the Court of King's-bench, or Common Pleas, have laſted a tenth of the time, or have coſt a twentieth part of the expence." Comment. Vol. III, p. 292.

A ridiculous practice, to ſay no worſe of it, is tolerated by this court, which ſerves to augment the expence of law, almoſt double. This is the printing of the proceedings, which generally run to an enormous length, through the introduction of impertinence and endleſs hypothetical reaſonings; whereas ſuch egregious abuſes of juſtice, not to be endured in a commercial nation, would at once be remedied, juſtice impartially adminiſtered, and the complaints of the people ſilenced, by ſubſtituting trial by jury, and the admiſſion of oral-teſtimony in open court. But are the judges of the Court of Seſſion competent, in point of knowledge to determine in commercial affairs? I apprehend, they are not; and cannot but think twelve merchants, aſſiſted by the learning of a judge, would be far better qualified to decide upon ſuch queſtions, and of courſe give general ſatisfaction to litigants. Yet, ſome of Hannibal's philoſophers may, perhaps, be vain enough to imagine they know more of policies of inſurance, and the various cuſtoms of trade, than thoſe who have been converſant in them from their infancy, and whoſe knowledge has been matured by intenſe application, and extenſive tranſactions.

It is further objected againſt this court, that governing itſelf by the maxims of the civil law, it rejects all public examination of witneſſes. Who is ſo ignorant as not to know that the open examination of witneſſes *viva voce*, in the preſence of all mankind, is much more conducive to the clearing up of truth, than the private and ſecret examination taken down in writing before an officer, or his clerk; where a witneſs may frequently depoſe that in private, which he will be aſhamed to teſtify in a public and ſolemn tribunal. There an artful, or careleſs ſcribe may make a witneſs ſpeak what he never meant, by dreſſing up his depoſitions in his own forms and language; but by a public examination, a witneſs is at liberty to correct and explain his meaning, if miſunderſtood, which he can never do after a written depoſition is once taken. Beſides, the occaſional queſtions of the judge, the jury, and the counſel, propounded to the witneſſes on a ſudden, will ſift out the truth much better than a formal ſet of interrogatories previouſly penned and ſettled; and the confronting of adverſe witneſſes, is another opportunity of obtaining a clear diſcovery, which can never be had upon any other method of trial. Nor is the preſence of the judge, during the examination, a matter of ſmall importance; for, beſides the reſpect and awe with which his preſence will naturally inſpire the witneſs, he is able by uſe and experience to keep the witneſs from wandering from the point in iſſue. In ſhort, by this method of examination, and this only, the perſons who are to decide upon the evidence, have an opportunity of obſerving the quality, age, education, underſtanding, behaviour, and inclination of the witneſs; in which points all perſons muſt appear alike, when their depoſitions are reduced to writing, and read to the judge, in the abſence of thoſe who made them; and yet as much may be frequently collected from the manner

manner in which the evidence is delivered, as from the matter of it.

I ſhall now conclude what I have to ſay upon the Court of Seſſion, by ſhewing, that in virtue of its *nobile officium*, an unparalleled act of cruelty and injuſtice was attempted to be carried into execution by the judges, againſt one James Carſe, ſo late as the year 1783; an act ſo inconſiderate and violent as to furniſh a further proof of the truth of this poſition, That the diſcretion of a judge is the law of tyrants; and that putting diſcretionary powers into the hands of ſome men, is almoſt as dangerous, as to truſt a naked ſword in the hands of a madman.

A diſpute having ariſen in Scotland between a laird and his tenant, concerning the occupation of a farm, it was agreed to leave it to arbitration; and the tenant choſe Mr. Carſe on his part. Various meetings were held between the parties; but as Mr. Carſe and the other arbitrator differed widely upon the matter, the latter, and the umpire, made an award in purſuance of the powers veſted in them by the principals. The tenant conceiving himſelf to be injured by the award, applied to the Court of Seſſion to annul it. The court appointed one of their judges to examine Mr. Carſe *ex officio*, as to ſome points in diſpute, whoſe depoſition being credited, the award was diſſolved. This produced a further application on the part of the laird, when the perſons who made the award, and the lawyer employed to draw it up, contradicted upon oath, in ſeveral particulars, the depoſition of Carſe; in ſo doing, however, the arbitrator and umpire were, at leaſt, ſo far intereſted, as to the confirmation of their own decree, though their examination did not go the length of any accuſation againſt him. The learned Judges of the Court

of Seſſion, who ſcatter their praiſes among the advocates with the ſame laviſhneſs, that the French king gives away his croſs of St. Louis, taking the caſe again under their conſideration, reverſed the judgment they had given in favour of the tenant, and affirmed the validity of the award. Carſe who had undertaken the office of arbitrator from motives of friendſhip to the tenant, and who could not have a ſhadow of intereſt in the reſult, one way, or the other, received a ſummons from the court, in the name of John Carſe, inſtead of James Carſe, dated December the 4th, to appear at the bar in four days. This was near eleven months after he had made the *ex officio* depoſition. Mr. Carſe, who lived near forty miles from Edinburgh, unſuſpicious of what was brewing againſt him, ſecure in his innocence, and deſpiſing to take any advantage of the miſnomer, preſented himſelf before the court agreeable to the citation; which, ſtrange to ſay, did not expreſs for what purpoſe he was ſent for. It was then, and not till then, he was informed, that in his depoſition he had not told the truth, and had prevaricated; ſo that there ſeems to have been a ſtudied concealment of what was meant to be laid to his charge, elſe why had they not mentioned it in the ſummons? Scarce two days were allowed him to prepare to defend himſelf againſt this heavy charge. No indictment was preferred againſt him. The fair mode of trial by jury, which the law of the land gave to M'Iver, M'Allum, and Herdman, who were charged and found guilty of boring holes in the bottom of ſhips, with an intent to defraud the underwriters, was denied to him. They proceeded againſt him in a ſummary way; inſtead of conſigning him to the proper criminal court, to be tried by his equals. He was not even allowed to confront, or croſs-examine the perſons by whom he had been contradicted. He was refuſed the privilege of calling a ſingle witneſs either to

confirm

confirm the truth of what he had depoſed, or to ſpeak to his good character. Tyranny, fearleſs of being called to an account for its conduct, gave a looſe to its rage againſt this unfortunate man. It is true he was allowed an advocate to plead for him, but, perhaps, the eloquence of Demoſthenes would have been loſt upon his judges.

In fine, the venerable Court of Seſſion, the ſtanding jury of Scotland, on the 16th of December, pronounced againſt Mr. Carſe this dreadful ſentence: "Find the ſaid James Carſe guilty of groſs prevarication, and willful concealment of the truth, in the oath emitted by him in the ſaid cauſe, and therefore ordain him to be carried from the bar to the Tolbooth of Edinburgh, therein to remain until Wedneſday the 14th day of January next, on which day, we ordain the ſaid James Carſe to be carried to, and put upon the pillory, there to ſtand bare-headed, from twelve at noon till one o'clock afternoon, with a paper fixed upon his breaſt with theſe words in large characters, *Groſs prevaricator and willful concealer of the truth upon oath*, and thereafter to be diſmiſſed; ordain the magiſtrates of Edinburgh to ſee this ſentence put in execution; —declare the ſaid James Carſe infamous, and incapable, in all time coming, of bearing any public truſt, or of being a witneſs in any action, or cauſe; and ordain this ſentence to be recorded in the books of Sederunt, to the terror of others, to commit the like crime in time coming."

It appears that Mr. Carſe was examined upon interrogatories adminiſtered to him in private. He came not to plead the cauſe of either party, or to ſtate the merits of the caſe; he came to anſwer what was aſked him. Could it be expected that he ſhould anſwer queſtions that

were not put to him. If there was a ſuſpicion of inconſiſtency in his oath, of ambiguous expreſſion, or of not ſpeaking out fully to the truth, in points perhaps that ſeemed to him of no conſequence, it was but fair to re-examine him, to have put particular queſtions to him regarding what he had depoſed, to remove every doubt, or ambiguity, by ſuch queries as had that tendency, and to interrogate him about what might be ſuppoſed to have been omitted. If the depoſition of this man appeared conſiſtent, on the face of it, as it certainly did, and was deemed ſo, by lord Gardenſton, one of the judges, where could be the prevarication? And to pretend to determine upon the ſecret impulſe of the mind, and to fix upon Mr. Carſe, from the *imaginations* of judges, the guilt of willful concealment of truth, under ſuch circumſtances, and ſuch an examination, may perhaps paſs for juſtice in the firſt civil court of Scotland; but of this, I am almoſt certain, —ſuch juſtice would be reprobated in every Court of Conſcience in England.

As ſoon as the ſentence had been paſſed upon Mr. Carſe, he was conducted to the jail of Edinburgh, where he was lodged among felons; and ſoon afterwards caught the goal-diſtemper, under which he languiſhed a conſiderable time, till his life appearing in iminent danger, by the report of the phyſicians who attended him, he was enlarged upon bail. It, however, fortunately happened, that Mr. Carſe, who had always ſupported a fair character, and was well eſteemed in his neighbourhood, was a man of property. Eſtimating the preſervation of his honour of more importance than the paltry conſideration of expence, he appealed againſt the ſentence to the Houſe of Lords, and choſe for his counſel the Honourable T. Erſkine, one of the beſt advocates that ever appeared in any

court

court in behalf of an oppreſſed man. "I confeſs, (ſaid that gentleman, in a paper I have ſeen under his own hand) that the conduct of the Court of Seſſion (ſpeaking of this ſentence) is irreconcileable to *every* idea I entertain of juſtice."

This important appeal, which was oppoſed by the Lord Advocate (Campbell) of Scotland, came on to be heard before their Lordſhips, in the ſummer 1784, and counſel having gone through their arguments, that illuſtrious judge, the Lord High Chancellor Thurlow, explained the cauſe to the Houſe in the cleareſt manner, and remarked, that though a power to puniſh a contumacious witneſs was inherent in Courts of Juſtice; yet, wiſe judges would exerciſe that power with lenity and diſcretion. "Whatever deſcription this man may be of, ſaid he, ſtill we muſt remember he is a *Briton*, and entitled to *all* the privileges and immunities of a Briton."—He deſcanted on the exceſſive ſeverity with which he had been treated, and to his immortal honour moved, that the whole of the ſentence againſt him ſhould be reverſed (the impriſonment, *which could not be recalled*, excepted) which being agreed to, without one diſſenting voice, and with viſible pleaſure in every face, the ſame was reverſed accordingly.

This intereſting deciſion of the Houſe of Lords, was received by the Scottiſh nation with univerſal applauſe, and will, to the lateſt poſterity, make the name of Thurlow be held in deſerved eſteem, and add to that ſtock of merit with the public, which his firmneſs and impartiality in the judgment ſeat has long ſecured to him, in ſpite of the cavils and enmities ariſing from political contention.

After

After what has been ſaid in the outſet of this prefatory introduction, I now deliver the work into the hands of the people, for whoſe ſake it was undertaken; and as, I truſt, I have not expreſſed myſelf otherwiſe than as a man ought to do who deſerves to be believed, nor with a warmth unbecoming the ſubject, I doubt not, therefore, but it will be received with as much candour by them, as the good intentions of the author may ſeem to deſerve. It is neceſſary however to obſerve, that in ſeveral places I have made uſe of the language of the hiſtorians referred to, which poſſibly may be fully more acceptable to the reader, than a laboured and perhaps ill executed tranſpoſition.

HISTORICAL SKETCHES OF CIVIL LIBERTY.

SECTION I.

THE advancement of civil and religious liberty, in every country, muſt naturally produce, at all times, the moſt agreeable ſenſations in the breaſt of every man who has the leaſt regard for the honour of human nature; ſeeing that their conſequent attendants are thoſe of happineſs, plenty, and ſecurity; and how much more muſt they be increaſed, when thoſe bleſſings are cultivated and extended in one's native kingdom.

IN thoſe countries where the liberties of the people are abridged by the mandates of deſpotic authority, whether proceeding from the power of the ſovereign, his nobility, or officers, or thoſe who have acquired large territorial poſſeſſions, the occupations of trade and agriculture are either neglected, or remain in a languid ſtate. Hence poverty, and its concomitant indolence, prevails there; the

people, for whom alone government was inſtituted, and who alone deſerve conſideration, having no incitements to ſpur them on to the due exerciſe of their induſtry. It is become a proverbial obſervation, that, Where arts, commerce and manufactures flouriſh, there freedom keeps her court. There, deſpotiſm dares not ſhew her head, becauſe the people, having a proper ſenſe of their own ſafety and dignity, under the protection of wiſe laws and eſtabliſhments, render it hazardous to attempt to rivet upon them the chains of ſlavery.

The injured rights of the people, in a country which deſerves to be called free, require only to be generally known to produce the redreſs of them, provided they have ſpirit enough to aſſert their juſt claims to thoſe gifts which God and Nature has indefeaſibly beſtowed upon them. The people who want that ſpirit, almoſt deſerve the ſlavery they endure. But, to ſtimulate them to inſiſt upon their own privileges, and to watch over them with the utmoſt care, they need only to attend to the example of thoſe in whoſe hands power is lodged, or who imagine they poſſeſs it in right

right of pecuniary advantages, or family pretenſions, and they will ſee, that, on all occaſions, ſuch men are but too ready to maintain an uſurped authority over them, as often as the means come within their reach; ſo that if they will crouch like camels to be loaded, they will ſoon feel the whip and ſpur of their taſk-maſters.

Scotland has, for a long time, maintained a juſt renown among the nations, for the progreſs ſhe has made in the arts and ſciences; and the fame of the learning of her profeſſors has filled her univerſities with ſtudents from moſt parts of Europe and North-America.

In the weſtern parts of it, the people were unequalled, previous to the American war, for their induſtry and ſucceſs in the advancement of commerce and manufactures; inſomuch, that the city of Glaſgow alone, rivalled in trade, and its productive revenues to the crown, all the cities and towns in Great Britain, London and Briſtol excepted; and at this moment they are puſhing on, with their uſual induſtry, infant manufactures of various kinds, in ſpite of the late oppreſſive taxes impoſed upon them. But how long they will

be able to continue them, time alone can ſhew, ſince the ſpirit of the working people there is almoſt broken by the reduced prices of labour, ſpringing from that cauſe, and whole communities of them threatening to emigrate elſewhere with their families, to earn that daily bread which the ill-judged ſchemes of the preſent adminiſtration will not ſuffer them to put into their mouths at home.

How comes it then, if the foregoing propoſition be true, that Scotland, being thus famed for learning, and poſſeſſing a tolerable ſhare of commerce and mannfactures, is ſo far behind England, as to the enjoyment of ſome of the deareſt rights of humanity?

To this it may be anſwered, that a people who had very little trade, whoſe cities and towns contained few inhabitants, who were oppreſſed by the conſtitution of their country, and who only began within theſe thirty years to feel their own ſtrength and conſequence, from the extenſion of commerce, and the acquiſition of wealth, could not effect their total emancipation from the calamities of their condition, juſt at the moment they were beginning to eſcape from them.

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Though it may be ſaid, that men acting manfully in the aggregate to aſſert their liberties, need wear no chains but of their own forging; yet diſcretion points out the neceſſity of a decent and well-timed application to the powers capable of giving redreſs. Unanimity, ſteadineſs, and perſeverance, are the ingredients neceſſary to accompliſh the ends of reform; and it is a pleaſing thing to find the ſpirit of the Scottiſh nation rouſed to the actual purſuit of ſuch meaſures, as bid fair to terminate in the extinction of that corrupted ſyſtem of repreſentation which has ſo long prevailed within their boroughs.

Every friend to the empire, and to liberty, cannot but wiſh ſucceſs to their endeavours; the compltion of which, I truſt, will be followed by the cure of other great evils, and ultimately tend to bring about a perfect union of THE WHOLE ISLAND UNDER THE SAME GLORIOUS CONSTITION. Till that happy æra arrives, which all good ſubjects deſire to ſee, the union of England and Scotland, muſt remain incomplete. However, to overturn any ſyſtem that has been ſactioned by long and uninterrupted uſage, and to entrench upon the power

power of thoſe who have long enjoyed it, muſt be allowed, from the diſpoſitions of human nature, to be attended with ſome difficulty, or, in other words, muſt meet a powerful reſiſtance.

The enemies of freedom do not argue thus; that bad cuſtoms ought to be remedied as ſoon as known. Private emolument or ambition, with moſt men, will have more weight than all the antiquated notions of juſtice, and the love of one's country. They have no idea of them, nor would it be at all ſurprizing to ſee the military provoſts, or lords-mayor of the ancient boroughs of Nairn and Tain, appearing among the foremoſt to oppoſe, in Parliament, ſo conſtitutional a meaſure, and ſo beneficial to the liberties of Scotland.

Military men, who have had the vanity to be nominated chief magiſtrates of boroughs will not, perhaps, approve of a plan calculated to counteract the practices of ambition, in regard to the improper attainment of civil honours. But by carrying a reform ſo much wanted into execution, the old method of

of ſecuring a provoſtſhip to pave the way to a ſeat in parliament for a Scots borough, muſt unavoidably be rendered infinitely more difficult to be obtained than it is at preſent. Beſides, what is of the higheſt importance, the freedom of election will thereby be communicated to a great number of citizens, who have been for ages deprived of the natural privileges of free ſubjects. But, let us ſuppoſe their election to thoſe high magiſterial offices, which require a perſonal reſidence on the ſpot, to have happened while the one was in India, and the other at Gibraltar, doing their duty in their proper avocations, without their conſent; the firſt thing they ought to have done on being informed of it, was to have thanked their electors, and declined the office. But to accept of it, without having either the leiſure or education neceſſary to enable them to diſcharge the duties of it, one would imagine is a circumſtance not very agreeable to the ideas of delicacy or juſtice.

Nor can it be ſuppoſed, without offering a groſs inſult to the electors of Nairn and Tain, that their free and voluntary ſuffrages were given

given for them; otherwiſe the people who choſe them muſt have been ſo far lunatic at the time, as to have ſtood in need of a ſtrait waiſtcoat. For what man in his ſenſes would put any truſt in, or endure the thought of a military provoſt, who had been in the habit of ordering men by the dozen to be blown off from the mouth of a cannon, in the way of his duty? Is not, then, the very idea of creating ſuch men to be civil magiſtrates or judges, a burleſque upon all order and common ſenſe? Cromwell, indeed, the better to ſecure himſelf in his protectorate, divided England into eleven diſtricts, and appointed major-generals to govern them with almoſt abſolute powers. The conſequence was, that they ſoon acted ſo tyrannically, and became ſo truly oppreſſive to the people, that Cromwell himſelf was at laſt aſhamed of their conduct, and, to ſtop the evil, contracted the powers with which he had inveſted them*.

And here ſince we have broached this ſubject, it may not perhaps be impertinent to take a curſory view of the fitneſs and conduct of military governors in his majeſty's colonies.

* Rapin's Hiſt. of England, vol. 2, p. 595.

The

The uniform practice of adminiſtrations, for a long time paſt, appears to have been, to appoint thoſe men governors who had the moſt political intereſt; but as to the point they ought to have previouſly taken into conſideration, they ſeem never to have beſtowed a thought upon it at all, namely, the *fitneſs* of the perſon for the office. What has been the reſult of ſuch appointments? Blunders, miſconduct and violence have enſued, in the diſtricts they were ſent to rule over.

The Governors Dalling and Cunningham, who are military men, lived in a ſtate of continual warfare in their reſpective governments, and quitted them without being in the leaſt regretted by the people, nay, to ſpeak the truth, with their univerſal execrations.

Accuſtomed to a kind of arbitrary ſway in their military line, they forget, and carry the notions of a camp diſcipline along with them when they enter into a civil department; and in their diſputes with individuals,

als, either in regard to property, or where their own immediate rights *appear* to be touched, feel a ſtrong impulſe to tie up their opponents to the halberts, without the ceremony of legal forms. It is a pleaſing reflection, however, for the peace of ſociety, that to bring men of this deſcription to a reaſonable and moderate way of thinking, or rather acting, there is ſuch a place as Weſtminſter-Hall, of which they ſtand in as much awe as if they were in full march to attack the forlorn hope.

But that which above all things appears the moſt ridiculous, is the appointment of a military governor to be a Chancellor. One would conclude that thoſe who appointed them to ſuch a truſt were actually unacquainted with the importance of it, and the abilities required to ſuſtain it; but ſo it is, the office of Chancellor is commonly annexed to that of governor.

Of the laſt four governors of Jamaica, two of them were captains of men of war, and the other two officers of the army. It

was

was pleaſant enough to an indifferent perſon to ſee the late Sir Baſil Keith (who was an amiable and upright man, and infinitely ſuperior to the other three in knowledge and induſtry) ſitting as Chancellor, to determine the greateſt matters of property, requiring him to be maſter of voluminous proceedings, involving in them the greateſt niceties and diſtinctions; altogether ignorant of the forms of law and technical expreſſion, and puzzled and confounded with the ſubtle arguments of counſel. It is true, he had two aſſiſtants, called there *Maſters in Chancery*, who uſually ſat on each ſide of him, the one a Creole planter, who had never been off the iſland, and the other a ſuperannuated and reduced merchant, with whom he might adviſe as to the knotty points before him. But let any one judge what aid he could derive from them, other than that to be expected from one blind man leading another.

A provincial *chancellor*, therefore, preſuming him to be a man of ſenſe, muſt be very much hurt at the contemptible figure he muſt

muſt make, in a ſtation only to be filled with credit by men of great abilities, bred up to the profeſſion.

But the matter, however it may divert others, is of a moſt alarming nature to the ſuitors of the court, who muſt be ſhocked on reflecting, that the riſque on either ſide depends, as it were, on the toſs-up of a halfpenny. Hence the number of appeals to the king and council.

To remedy this glaring evil, a barriſter of probity and experience from England ought alone to fill the office of Chancellor, in the few colonies which Lord North and his colleagues have left the king to call his own; and it is a conſideration of infinite moment to employ proper *civil governors now* to rule thoſe few, ſince to the imprudence and violence of *military magiſtrates* may, in a great meaſure, be attributed the *ſo ſpeedy* diſmemberment of America from the Britiſh empire.

General

The conduct of Governor Dalling to Mr. Harriſon, the late deputy-recorder of London, while attorney-general of Jamaica, was beyond all meaſure ſo tyrannical, as to become the ſubject of general and deſerved condemnation, among all thoſe who had ever heard of the tranſaction.

In the month of October 1779, the Britiſh ſettlers on the Muſquito ſhore and Bay of Honduras, being hard preſſed and in great danger from the Spaniards, Governor Dalling had diſpatched Captain Dalrymple, commandant of a new corps raiſed in Ireland for the ſervice of Jamaica, with a ſmall force and ſome arms to their relief. Admiral Sir Peter Parker, then lying at Port Royal, had alſo detached a ſmall ſquadron of three frigates and a ſchooner, under the conduct of Captain Luttrel, as commodore, to the Bay of Honduras, in order to intercept ſome Spaniſh regiſter ſhips, which however eſcaped under the guns of the ſtrong fortreſs of St. Ferdinand de Omoa.

By

By the united bravery of the ſea and land forces the place was taken, with ſeveral galleons and other veſſels in the harbour. The value found on board the galleons, and the cargoes of the other veſſels taken there, were eſtimated at about three millions of pieces of eight.

There aroſe a queſtion at Jamaica, concerning the quantum of the *opima ſpolia* to which the Governor was entitled, founded upon the affidavit of a gentleman of the name of Bartlett. The opinion of Mr. Harriſon was taken upon it. The Governor was offended at the narrowneſs of his opinion. No man of honour could give an opinion againſt his conſcience, or what he conſidered to be the law; and Mr. Harriſon was univerſally regarded in the iſland for his incorruptible integrity and legal knowledge.

A coolneſs enſued between them on this account, and Mr. Harriſon thought fit to reſign his employment of attorney-general, from which, the Governor might ~~uſurp~~ exercise a power for the time being, to remove him.

As

As he had reſigned the attorney-generalſhip, Governor Dalling, to ſhew to what length he could carry his oppreſſion, diſmiſſed him from his office of advocate-general, to which he had been appointed by the Lords of the Admiralty, from whoſe authority the office originates. To diſmiſs any man from a department without he is firſt legally convicted of being unworthy to hold it, is a ſpecies of tyranny inſupportable in a free government; but General Dalling, in the wantonneſs of his authority, ſuſpended him from this office, of which, as governor, he had not the legal appointment. Not ſatisfied with this, he iſſued an official notice in the news-papers, ſigned by Clements his ſecretary, importing, That he would not tranſact any buſineſs in which Mr. Harriſon had the leaſt concern.

Application was made ſome time afterwards, by Mr. Harriſon, to the ſupreme court, for a mandamus to reſtore him to his office, upon which the judges granted a *rule niſi*. The governor felt his dignity inſulted by this reſort, and, as a mark of his indignation

nation at their interference, ſuſpended them from their appointments, before the matter came to be argued in chief. Theſe arbitrary proceedings of the governor created a general murmuring throughout the iſland; and the judges, conſcious of having given no juſt cauſe for their removal, appealed to the Board of Trade. The matter underwent an inveſtigation there. The conduct of the governor was highly cenſured, and an order tranſmitted from Lord George Germain, one of his Majeſty's principal ſecretaries of ſtate, by command of his Majeſty, to Jamaica, to reſtore them to their ſeats, accompanied with a letter to the governor, containing a ſmart reprimand on his conduct.

This exertion of the governor's *military diſcretion* proved, however, of ſervice to the liberties of the iſland. The aſſembly took up the matter, and framed an act to reſtrain future governors from the exerciſe of a ſimilar tyranny. After repreſenting, in the preamble of it, the many evils that had ariſen from the judges holding their places at the "ſole will and pleaſure" of the commander

in

in chief, whoſe power extended to diſplace them without ſhewing cauſe, and thereby manifeſtly tended to leſſen their dignity, bias their minds in their determinations, and render them ſubſervient to the will and pleaſure of a governor, it enacts, that the judges ſhall not be removed from their office, until his Majeſty's pleaſure ſhall be ſo ſignified, under his ſign manual; with a proviſo, that the governor, with the conſent of five of his council, upon ſufficient cauſe ſhewn, may ſuſpend any of them; ſuch governor ſending his Majeſty a true ſtate of the cauſe of ſuch ſuſpenſion, for his royal determination, and delivering the judge ſuſpended a true copy of the cauſe of it, ſigned by the governor, to enable ſuch judge to make his defence. To this act, which was a palpable impeachment of the impropriety of his conduct, he gave his conſent, on the 13th day of February, 1781, though, in all probability, very much againſt his inclination; and it received the royal ſanction on the 2d of January, 1782. In the mean time, Mr. Harriſon was reſolved, that an offence ſo attrocious as his removal

from the advocate-generalſhip, ſhould not be paſſed over, without uſing every endeavour to obtain redreſs. Having prepared a juſt repreſentation of his caſe, he laid his complaints before the Admiralty-Board, craving to be reinſtated; who, being convinced of the illegality of Governor Dalling's conduct in this affair, ſent out a mandate to Jamaica, authorizing the advocate-general to re-aſſume his office *.

General

* We have been favoured, in the moſt obliging manner, by the approbation of the Right Honourable the Preſident of his Majeſty's Council, with a true copy of the following Repreſentation, which we give in ſupport of the above allegations:—

"AT THE COURT AT ST. JAMES's, 23d MARCH, 1781.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY,

Lord PRESIDENT,	Viſcount STORMONT,
Earl of SANDWICH,	Lord NORTH,
Earl of HILSBOROUGH,	Lord AMHERST,
Lord GEORGE GERMAIN,	Sir RICHARD WORSLEY,
Viſcount TOWNSHEND,	Sir JOSEPH YORKE,
Viſcount FALMOUTH,	Sir JOHN GOODRICK.

"WHEREAS,

General Campbell (who was one of thoſe four governors of Jamaica, and rather a popular

"WHEREAS, there was this day read at the Board, a report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs, dated this day, viz.

"YOUR Majeſty, having been pleaſed, by your order in Council, of the 16th of this inſtant, to refer unto this Committee a Repreſentation, from the Lords Commiſſioners for Trade and Plantations, in the words following, viz.

"In obedience to your Majeſty's commands, ſignified to us by Lord George Germain, one of your Majeſty's principal ſecretaries of ſtate, we have taken into conſideration the humble petition of James Trower, Lewis-Burwell Martin, John Grant, and William Elphinſtone, Eſqrs. late aſſiſtant-juſtices of your Majeſty's Supreme Court of Judicature for the Iſland of Jamaica, to your Majeſty, ſtating, That on the 10th day of June laſt they had been degraded by John Dalling, Eſq; your Majeſty's governor, pending the proceedings in a certain matter upon which they had given their opinion, and praying to be reinſtated agreeably to their former rank, together with the proceedings of the Supreme Court, relative to Mr. Harriſon, whereupon we humbly beg leave to repreſent to your Majeſty, that the petitioners, excluſive of a memorial explanatory of a petition to your Majeſty, of which memorial we have annexed a copy, have laid before us the proceedings in the ſaid Supreme Court, and other documents to which the ſaid petition and memorial refer, authenticated under the Great Seal of the Iſland of Jamaica; and that Governor Dalling has, on his part,

popular one upon the whole), likewiſe incurred abundance of cenſure, by the nomination

tranſmitted the proceedings of the Houſe of Aſſembly of the ſaid Iſland, upon an enquiry made into the conduct of the petitioners, and into the cauſe of their being diſplaced, together with ſome other papers, his obſervations thereupon, and ſome reaſoning upon the whole of the tranſaction, tending to his juſtification, and that the correſpondence of the Lord Commiſſioners of the Admiralty, with Governor Dalling, has been tranſmitted to us, together with ſome information from your Majeſty's ſecretary of ſtate for the American department: upon a view of theſe papers, being apprized that your Majeſty has granted Governor Dalling leave of abſence from his government, and that his arrival here may be ſoon expected; and as we do not find that he has authorized any perſon to appear, or to apply for the admiſſion of counſel in his behalf, we muſt defer complying with the prayer of the memorialiſts, to be heard by their counſel, in ſupport of the charges againſt Governor Dalling, and therefore, we cannot at preſent enter into a final and deciſive conſideration of the whole of his conduct, which, we are concerned to find, has given occaſion to a variety of contention and altercation, and diſturbed the peace and harmony of your Majeſty's ſubjects in the iſland of Jamaica. It nevertheleſs becomes our duty, humbly to obſerve to your Majeſty, that a due, impartial, and uninfluenced adminiſtration of juſtice, in your Majeſty's colonies, is a matter in which the lives and properties of your Majeſty's ſubjects are moſt materially intereſted; and that the interference of a governor, in any proceedings in a court of judicature, which do not come in due courſe, and officially before him,

and

nation of a chief-juſtice to ſucceed the late *General French*, who had been appointed to that

and more eſpecially pending the cauſe, is highly improper, and ever to be diſcouraged; that the characters, integrity, and conduct in office, (except in this inſtance) of the diſplaced judges, are fully admitted by Governor Dalling, as ſtanding unimpeached; and that the reaſons adduced by him in juſtification of the ſtep he has taken, (the objection to which ſeems in a great meaſure to be aggravated, by the diſmiſſion taking place while three out of four of the petitioners were actually ſitting in judgment) do not appear by any means ſufficient, and more eſpecially, as it was partly founded upon a preſuppoſition of what might be in future their opinion upon the matter before them. It may not be improper for us to add here, that Governor Dalling omitted at the time to tranſmit his reaſons for diſplacing the petitioners, although, by his inſtructions, he is pointedly directed ſo to do, in every inſtance where he might think it neceſſary to exert the powers intruſted to him by your Majeſty. Upon the whole, it clearly appears, that had Governor Dalling thought proper to reinſtate Mr. Harriſon in the office of advocate-general in the court of Vice-Admiralty, agreeable to the directions of the Lords Commiſſioners of the Admiralty, whoſe authority over the courts under their own regulation he appears to have denied, the whole of the ſubſequent diſagreement, and the complaints now before us could not have exiſted; therefore, in order that juſtice may be done to the character and integrity of the petitioners, and that the minds of your Majeſty's ſubjects in the iſland of Jamaica may be quieted, that the good of your Majeſty's ſervice may no longer be impeded, and that harmony

that office by Governor Dalling. During many years, the chief-juſticeſhip had been filled by gentlemen of the long robe, of acknowledged abilities, and unblemiſhed reputation *.

mony and confidence may be reſtored, we humbly ſnbmit to your Majeſty, that James Trower, Lewis-Burwell Martin, John Grant, and William Elphinſtone, Eſqrs. be reinſtated in their ſeats and rank, as aſſiſtant-judges of the Supreme Court of Judicature for the ſaid iſland. The Lords of the Committee, in obedience to your Majeſty's ſaid order of reference, this day took the ſaid repreſentation into their conſideration, and concurring in opinion with the ſaid Lords Commiſſioners for Trade and Plantations, do agree humbly to report, that it may be adviſeable for your Majeſty to give directions for reinſtating the ſaid four aſſiſtant-judges in their former ſeats and rank."

"His Majeſty, taking the ſaid report into conſideration, is pleaſed, with the advice of his Privy-Council, to approve thereof, and to order, that the Right Honourable Lord George Germain, one of his Majeſty's principal ſecretaries of ſtate, do receive his Majeſty's royal pleaſure for reinſtating the ſaid James Trower, Lewis-Burwell Martin, John Grant, and William Elphinſtone, Eſqrs. in their ſeats and rank, as aſſiſtant-judges of the Supreme Court of Judicature for the ſaid iſland of Jamaica..

* Thomas Beach, Edward Webley, and Richard Welch, Eſqrs.

Theſe

Theſe precedents, however, had no weight with General Campbell, who ſtept over the whole bar, and appointed one Mr. John Grant, a man full of paſſions and prejudices, to the chief-juſticeſhip. This gentleman was by no means qualified for the diſcharge of this important employment, inaſmuch as at one time he was a ſtudent of medicine at Edinburgh, at another time following the camp, in the walk of purveyor or victualler in North-America; and at length appearing in Jamaica, in the character of factor to the late Sir Alexander Grant.

Leaving modeſty on one ſide, he, in a ſet ſpeech from the bench, told the bar, he had read law, and was fit for his office; a declaration which ſufficiently diſplays his ſenſibility. But, with what propriety he can perform the duties of this office, eſpecially when the doctrine of entails and deſcents, and all the perplexities of ſpecial pleading come to be argued before him, muſt appear extremely obvious to the ſhalloweſt capacity.

By

By the injudicious choice of this man, the counſel at the bar are ſuffered to run riot, to hazard every idea that comes uppermoſt, and partially to cite caſes juſt as they pleaſe, without the fear of detection from the bench; and one of them * has been often known to lull the audience aſleep, by a tedious and elaborate harrangue of three hours length, which, in Weſtminſter-hall, or before proper judges, would not have been endured longer than ten minutes. But there is a circumſtance attending this affair, which throws a ſerious imputation on the *ſincerity* of the governor, namely, *a prior promiſe* to appoint the attorney-general, Sewel, ſon of the late maſter of the rolls, to the chief-juſticeſhip; a gentleman, who, independent of his ſolid knowledge in his profeſſion, is allowed, by unanimous conſent, to be a man of moderation, ſenſe, and probity.

To recapitulate all the oppreſions of military governors, would be too great a taſk

* Hen. Brown.

to

to gain admiſſion here; ſince it would require many volumes to deſcribe and prove the numberleſs inſtances, in which they have daringly violated, in their governments abroad, the unchangeable liberties of Britiſh ſubjects.

The more recent miſconduct of General Haldimand, the late governor of Canada, cannot, however, be paſſed over in ſilence. His adminiſtration in that province was truly in the military ſtile; oppreſſive to the people, and unavoidably attended with their general diſcontent and reproach.

In his diſpoſition violent to an extreme degree—as a foreigner unacquainted with our language, a ſtranger to our laws, bred up during his infancy under an arbitrary government, and trained in a military ſchool, at all times hoſtile to freedom, what infatuation could have ſeized the Miniſtry to appoint ſuch a man, to ſuch a truſt, but a total diſregard and contempt of the rights of the people, over whom they had deputed him to govern? Treading in the

footſteps of other military governors, he ſtrove to ſhew his Majeſty's tranſatlantic ſubjects, that their happineſs or convenience were matters he valued not; or, in other words, deſpiſed.

The Calebogus Battery, at Quebec, was a place open to all ranks of people, both before the conqueſt of Canada, and long after that event. Here, General Sir Guy Carleton often delighted to walk, intermixing with the inhabitants, by whom he was greatly beloved and reſpected.—However, General Haldimand had ſcarcely ſeated himſelf in his government, before he gave the word of command to incloſe it, which was immediately complied with; and this agreeable walk, ſo neceſſary to the health of the people, he turned into a garden for his own individual recreation. Nor did he ſtop here. His garden muſt be extended, and in order to accompliſh it, he cauſed a public ſtreet in Quebec to be wholly ſhut up, and converted into that uſe, to the great inconvenience of the citizens. In vain did the grand jury of that diſtrict remonſtrate

remonſtrate againſt the illegality and oppreſſion of this ſtep. He perſiſted in keeping poſſeſſion of it, as long as he remained in his government; but the wiſdom of his ſucceſſor, Lieutenant-Governor Henry Hamilton, adopted a ſyſtem of adminiſtration more ſuitable to the Engliſh conſtitution; and, among many juſt and equitable regulations, he ordered this ſtreet to be opened and reſtored to the uſe of the public *.—

There

* *To the Hon.* HENRY HAMILTON, *Eſq; Lieutenant-Governor and Commander in Chief of the Province of* QUEBEC, *&c.*

" May it pleaſe your Honour,

" WE, the ſubſcribers, his Majeſty's faithful ſubjects, merchants, traders, and others of Quebec, return you our warmeſt thanks for the facility that is given to the fiſheries and trade in the lower part of the province; and for the very early attention which we underſtand your Honour has paid to the trade of the Indian country, by adopting meaſures, which we humbly conceive cannot fail to promote ſo very valuable a branch of the commerce of this extenſive province.

" Permit us alſo to expreſs our higheſt ſatisfaction at ſome ordinances that have been made in the courſe of the laſt ſeſſion of Council, under your Honour's adminiſtration, particularly one, granting us trial by juries in commercial matters.

There was adjoining to this ſtreet a public garden, which had been given to the town by his predeceſſor, General Carleton. It was charmingly laid out in ſerpentine walks, and diſplayed a variety of other rural decorations; ſo that it was much frequented by the fair ſex, with their numerous train of little prattlers; and was, in fact, conſidered

"And while we offer to your Honour our grateful acknowledgments for your attention to the intereſt and welfare of the province at large, throughout which we are happy to learn that tranquillity and harmony ſubſiſt among all ranks of the people; we beg leave to aſſure you that we are not unmindful of the regard you ſhewed to the eaſe and convenience of the citizens of Quebec, by opening the old communication from the Parade to the Citadel through the Rue de Carier ſo long ſhut up from the public, and which the repeated repreſentations of the Grand Jury for years paſt could not effectuate.

"Truly ſenſible of your unremitting attention to the welfare and proſperity of the province, we are extremely happy in teſtifying to your Honour theſe our ſentiments on the anniverſary of his Majeſty's birth-day, ſincerely praying he may reign long and happy over us; and we wiſh our expreſſions of loyalty and attachment to his Majeſty's perſon, family, and government, may be made known to our moſt gracious Sovereign. We are," &c.

Signed by Seventy-one of the principal inhabitants of Quebec.

as

as the faſhionable reſort, or Mall of the place. Yet, this Nabal of a governor was ſo devoid of every particle of delicacy, and eſtimated the affections of the people at ſo low a rate, that he alſo cauſed it to be incloſed and incorporated with his garden, in defiance of all verbal oppoſition.

To lay open the arbitrary diſpoſition of this man, and to ſhew how great a niggard he was in allowing of the gratification of others, the following incident is alone ſufficient: —When the news of the glorious victory, obtained by Lord Rodney over the French fleet, on the 12th April, 1782, reached the ears of the loyal inhabitants of Quebec, they gave vent to their tranſports by illuminations, bonfires, and other manifeſtations of joy. General Haldimand was at that time abſent; but, as ſoon as he returned to town, he ſignified his diſpleaſure at ſuch doings, alledging, that mutiny and rebellion often ſprung from that kind of irregular mirth; and even hinted, that it would be proper to puniſh thoſe who had been moſt conſpicuous in diſplaying ſuch

real

real marks of loyalty and good-will to their king and country.

In vain were the private complaints of individuals, againſt his conduct to them, made familiar to his ear. In vain was he forewarned of the puniſhments that awaited him on his arrival in the capital, where thoſe jealous patrons of liberty, an Engliſh jury, are ever ready to extend their long arms to protect the meaneſt injured individual appealing to them, from the remoteſt corner of the empire*. The city of London exhibits in itſelf the picture of a well-governed republic; therefore, to ſuppoſe that the arts of corruption, or undue influence to counteract the laws, could be ſucceſsfully practiſed there, upon juries, as in ſmall communities, would be as vain as to imagine, that a man could put chains upon the ſea, or perform any other impoſſibility.

* We have been informed from good authority that he thus expreſſed himſelf: "Dam de Engles jury—I care noting for dem—de miniſtry will ſtand my frind—I will lay my complaints before dem." As if his Majeſty's miniſters were ſuperior to an Engliſh jury, or capable of diverting the courſe of juſtice.

No

No colonial adminiſtration was ever more odious to the people, than that of General Haldimand; inſomuch that, maugre all the arts of a Scottiſh medical judge, named Maben, his privy-counſellor and coadjutor, he could not prevail upon ſix perſons in the province, at no one period ſince his arrival in it, to ſubſcribe an addreſs to him, to be applied to the purpoſe of trumpeting the mildneſs of his government in the news-papers. All the officers of the Crown, of any important truſt, in that country, were totally adverſe to the whole tenor of his conduct; and much reſpect is due to them, ſince it does not appear, that any complaint for peculation, or any other offence, was ever preferred againſt one of them, during a long and complicated war. In a word, he departed from his government, not amidſt the acclamations of the people; his ſenſe of hearing was not regaled by them with the ſweet muſic of a proſperous voyage; on the contrary, although they did not perhaps wiſh him to be in the ſituation of a man left in the middle of the ocean, on board of a crazy boat, without proviſion, maſt, ſail, compaſs,

compaſs, or rudder, yet, they heartily prayed never to ſee his face among them again in the ſame capacity.

It may be aſked, is there no remedy in this land of freedom, where liberty is even extended to a ſlave who had been purchaſed, in the way of trade, for what is called a *bona fide* conſideration, to correct the indiſcretion of his Majeſty's Miniſters, in the appointment of ſuch weak and unqualified chief magiſtrates? Or, are thoſe men, who ſo lately voted, that the "influence of the crown had increaſed, is increaſing, and ought to be diminiſhed," ſo inſenſible of the ſufferings of our coloniſts, as tamely to permit miniſters to proceed in the ſame wanton career, without making one effort to ſet limits to their power in this caſe?

But, to make a tranſition to military members of Parliament, would it not be a *conſummation devoutly to be wiſhed* for by the nation, to ſee their utter excluſion from the Houſe of Commons, as altogether incompetent to ſit there. Sir William Blackſtone ſays,

ſays*, "That it is a matter moſt eſſential to the liberties of this kingdom, that ſuch members be delegated to this important truſt, as are moſt eminent for their probity, their fortitude, and their knowledge."

With reſpect to moſt military members, the article of knowledge is, of itſelf, a ſufficient objection to them; and what proves that the people of England have no opinion of their *eminent probity, fortitude, and knowledge, is,* that moſt of them derive a right to their ſeats from the ſuffrages of the electors of rotten boroughs. He who has ſtudied the profeſſion of arms, and courted glory in it, by the *real* ſervice of his country, will feel little inclination to *turn politician,* and to begin, at a late time of day, to acquire a ſufficient knowledge of the conſtitution and detail of government, to qualify him to fit in parliament.

There are many examples, however, that ſeem to impeach this aſſertion. Military

* Commentaries, vol. 1. book 1. c. 2. p. 161.

men are now actuated by the ſame rage as other men, to obtain a ſeat there, to gratify the ends of ambition, or of vanity. By dint of money, or family intereſt, a holiday captain, who has hardly learnt the rudiments of tactics, or attained the age of one-and-twenty, is thruſt into the Great Council of the nation, as a ſubſtitute for a man *eminent for his probity, his fortitude, and his knowledge*, and adds to the reſpectability and wiſdom of that omnipotent aſſembly.

A military or naval member of Parliament, if his principles or profeſſions lean towards oppoſition, is not the ſureſt or beſt officer to inveſt with a command. Let no ſuch man be truſted. By connecting himſelf with party, he taints the honour of a ſoldier; and often mixes political prejudices with his fighting, that the ſchemes of his political adverſaries may be brought into diſgrace, as the certain road to his own preferment, on a change of the Miniſtry. The memorable 27th of July, 1778, is ſtill recent in the minds of the people; nor is it, perhaps, hazarding too much to ſay, that the

the ſeeds of faction were viſible in the engagement of that day; and to the unfortunate iſſue of it may be imputed, all the diſaſters which afterwards befel the empire.

The admirals Keppel and Palliſer were both members of Parliament. The diſgrace of that day, united with their mutual recriminations, threw the whole nation into a violent ferment, and the navy was infected with their quarrel. Each of them had their partizans, who violently defended their conduct, ſupported their *manœuvres*, and coloured over their miſtakes. But a ſuperior weight was thrown into the ſcale of Admiral Keppel, by the celebrated repreſentation* of

* *Repreſentation delivered to his Majeſty on December* 30, 1779, *by his Grace the Duke of Bolton.*

TO THE KING.

" We, the ſubſcribing Admirals of your Majeſty's Royal Navy, having hitherto on all occaſions ſerved your Majeſty with zeal and fidelity, and being deſirous of devoting every action of our lives, and our lives themſelves, to your Majeſty's ſervice and the defence of our country, think ourſelves indiſpenſibly bound by our duty to that ſervice and that country, with all poſſible humility, to repreſent to your wiſdom and juſtice,

 " That

of the twelve Admirals, a mode of application procured by influence, liable to inſuperable

" That Sir Hugh Palliſer, vice-admiral of the blue, lately ſerving under the command of the honourable Auguſtus Keppel, did prefer certain articles of accuſation, containing ſeveral matters of heinous offence againſt his ſaid commander in chief, to the Lords Commiſſioners for executing the office of Lord High Admiral of Great Britain, he the ſaid Sir Hugh Palliſer being himſelf a commiſſioner in the ſaid commiſſion. This accuſation he the ſaid Sir Hugh Palliſer withheld from the twenty-ſeventh of July laſt, the time of the ſuppoſed offences committed, until the ninth day of this preſent December, and then brought forward for the purpoſe of recrimination againſt charges conjectured by him the ſaid Sir Hugh Palliſer, but which in fact were never made.

" That the Commiſſioners of the Admiralty, near five months after the pretended offences aforeſaid, did receive from their ſaid colleague in office the charge made by him againſt his ſaid commander, and without taking into conſideration the relative ſituation of the accuſer and the party accuſed, or attending to the avowed motives of the accuſation, or the length of time withholding, or the occaſion of making the ſame, and without any other deliberation whatſoever, did, on the very ſame day on which the charge was preferred, and without previous notice to the party accuſed, of an intention of making a charge againſt him, give notice of their intending that a court-martial ſhould be held on the ſaid Admiral Keppel, after forty years of meritorious ſervice, and a variety of actions in which he had exerted eminent courage and conduct, by which the honour and power of this

ſuperable objections on the face of it, and hitherto unknown in the annals of hiſtory.

But,

this nation, and the glory of the Britiſh flag, had been maintained and encreaſed in various parts of the world.

" We beg leave to expreſs to your Majeſty our concern at this proceeding, and to repreſent our apprehenſions of the difficulties and diſcouragements which will inevitably ariſe to your ſervice therefrom; and that it will not be eaſy for men, attentive to their honour, to ſerve your Majeſty, particularly in ſituations of principal command, if the practice now ſtated to your Majeſty be countenanced, or the principles upon which the ſame has been ſupported ſhall prevail with any Lord High Admiral, or with any commiſſioners for executing that office,

" We are humbly of opinion, that a criminal charge againſt an officer, (riſing in importance according to the rank and command of that officer), which ſuſpends his ſervice to your Majeſty, perhaps, in the moſt critical exigencies of public affairs, which calls his reputation into doubt and diſcuſſion, which puts him on trial for his life, profeſſion, and reputation, and which, in its conſequences, may cauſe a fatal ceſſation in the naval exertions of the kingdom, to be a matter of the moſt ſerious nature, and never to be made by authority but on ſolid ground, and on mature deliberation. The honour of an officer is his moſt precious poſſeſſion, and beſt qualification; the public have an intereſt in it; and whilſt thoſe under whom we ſerve countenance accuſation, it is often impoſſible perfectly to reſtore military fame, by the mere acquittal of a court-martial. Imputations made by high authority remain long, and affect deeply. The ſphere of action of commanders in chief is large, and their

buſineſs

But preſuming that military or naval members are to be choſen, as men *moſt eminent for their*

buſineſs intricate, and ſubject to great variety of opinion; and before they are to be put on the judgement of others, for acts done upon their diſcretion, the greateſt diſcretion ought to be employed.

" Whether the Board of Admiralty hath by law any ſuch diſcretion, we who are not of the profeſſion of the law cannot poſitively aſſert; but if we had conceived that this board had no legal uſe of their reaſon in a point of ſuch delicacy and importance, we ſhould have known on what terms we ſerved. But we never did imagine it poſſible, that we were to receive orders from, and to be accountable to thoſe who, by law, were reduced to become paſſive inſtruments to the poſſible malice, ignorance or treaſon of any individual who might think fit to diſarm your Majeſty's navy of its beſt and higheſt officers: we conceive it diſreſpectful to the laws of our country, to ſuppoſe them capable of ſuch manifeſt injuſtice and abſurdity.

" We therefore humbly repreſent, in behalf of public order as well as the diſcipline of the navy, to your Majeſty, the dangers of long concealed, and afterwards precipitately adopted charges, and of all recriminatory accuſations of ſubordinate officers againſt their commanders in chief; and particularly the miſchief and ſcandal of permitting men, who are at once in high civil office and in ſubordinate military command, previous to their making ſuch accuſations, to attempt to corrupt the public judgment, by the publication of libels on their officers in a common news-paper, thereby exciting mutiny in your Majeſty's navy, as well as prejudicing the

their probity, their fortitude, and their knowledge, yet they are incompetent to ſit in parliament on the ſcore of independence. If they vote with the miniſtry all is well; but if they obey the dictates of their conſcience, in oppoſing the meaſures of the court, they are diſmiſſed from their employments, if they hold any under the crown, and are laid aſide as unfit to ſerve their country, in their proper departments *.

the minds of thoſe who are to try the merits of the accuſation againſt the ſaid ſuperior officer.

Signed,	HAWKE,	BRISTOL,
	JOHN MOORE,	JAMES YOUNG,
	BOULTON,	MATTHEW BARTON,
	SAMUEL GREAVES,	FRANCIS GEARY,
	HUGH PIGOT,	SHULDHAM,
	ROBERT HARLAND,	CLARK GAYTON.

The gallant Rodney was applied to for his ſignature to this Repreſentation, who nobly anſwered, "I have nothing to do with their quarrel, nor will I ſuffer my name to appear, to anſwer the purpoſes of faction. I will ſerve my King and Country, ſhould the *Devil ſit at the helm.*"

* Colonel Barré, member of Parliament, was diſmiſſed from his government of Stirling-Caſtle, becauſe he oppoſed the famous affair of General Warrants, in the caſe of Mr. Wilkes, when that incorruptible patriot withſtood, in his own perſon, the whole power of unconſtitutional reſentment.

SECTION

SECTION II.

THE liberal diſpoſitions of the more enlightened part of the Engliſh nation, who have now happily forgot thoſe antiquated prejudices which once ſubſiſted between the two kingdoms, with that congeniality of ſentiment ariſing from commercial intercourſe, united with the civil and military virtues of the Scots, opened a broad road to Mr. Dempſter, and other well-wiſhers to their country, to be the inſtruments of taking off the reſtraints impoſed on the Highlanders, in reſpect to their ancient garb, procuring the abolition of the perſonal ſervitude of the Scots tenants to their landlords and chieftans, and introducing the Proteſtant oath and forfeited eſtates bill, and other deeds of public benefit and notoriety.

Theſe indications of patriotic virtue merit the thanks of their countrymen, who claim, while they ſit in parliament, a continued and ſpirited exertion in the noble work

work they have begun. To ſtop ſhort in the middle of it would prove a ſenſible injury to their country, which has too long been limited in thoſe privileges which are the birth-right of man, and depriving themſelves of that glory, which, if neglected by them, muſt ſooner or later devolve to others leſs indolent, or poſſeſſing that genuine ſpirit of patriotiſm, which deſpiſes every ſelfiſh conſideration, and ſets cold prudence aſide, when the good of their country is at ſtake.

It is a lamentable truth, that in Scotland civil liberty is extremely circumſcribed.—Mortifying traces of the feudal ſyſtem ſtill remain viſible there, while they are little known, and leſs felt, on this ſide of the Tweed.

In England, "The country ſmiles with cultivation; the grounds exhibiting all the perfection of agriculture, parcelled out into beautiful incloſures, corn fields, hay, and paſture, wood-land and common. Her meadows are well ſtocked with black cattle; her downs covered with ſheep; her teams

of oxen large and ſtrong, fat and ſleek. Her farm-houſes the habitations of plenty, cleanlineſs, and convenience; and her peaſants well fed, well lodged, well cloathed, tall and ſtout, hale and jolly."

Scotland is beautifully diverſified with hill and dale; and in many parts abounding in corn, ſheep, and black cattle. In general, however, the ſoil is far from being ſo rich as in England; nor is it, ſuch as it is, cultivated with the ſame induſtry. The corn-fields, in moſt places, are without hedges or fences; the cattle ſmall and half ſtarved; the habitations wretched and dirty, ſwarming with beetles and other vermin, becauſe the warmth and cleanlineſs of a deal floor is little known there. The countenances of her people wear the marks of depreſſion, indigence, and deſpair; ariſing, perhaps, from the oppreſſions of their landlords, who are invulnerable by law, and a contracted ſyſtem of religion, which begets in them an uncharitable and thriftleſs way of thinking. The condition of the ſmaller farmers, who are by far the moſt numerous,

is

is truly lamentable: the moſt they are able to do, is to provide a ſcanty ſubſiſtence for themſelves and their families from one year to another. A bad year brings ruin with it, many of them being on that account hardly able to procure ſeed for their grounds, in the hope of reaping a plentiful harveſt the enſuing year. Beſides, there is a great want of ſkill about them in the management of their lands, which, added to a ſhameful ſlovenlineſs in almoſt every thing they do, in ſome meaſure, may be looked upon as one of the cauſes why poverty is ſo much ſeen amongſt them.

Local misfortunes are always increaſed, where the hand of oppreſſion is ſtretched forth againſt the people, and inclines them to be liſtleſs and inattentive to improvement; but where the genius of liberty ſheds her benign influence, the ſweets of induſtry ſhall baniſh deſpair, the deſart ſhall be made to ſmile, and the horn of plenty ſpread abroad her ſtores among them.

It is well known, that the nobility and men of great landed property there, have it but too much in their power, owing to the feudal practices that ſtill prevail within their juriſdictions, and the partial adminiſtration of juſtice at the fountain-head, to ſport with the rights of the tenantry, and other inferior orders of men; and inſtances too often occur of their uſing that power with very little reſpect to the rights and dignity of human nature.

Lord Bacon has obſerved, "That ſtates and kingdoms that aim at greatneſs, ought to take heed how the nobility and grandees, and thoſe we call gentlemen, multiply too faſt; for that makes the common ſubjects become mean abject things, and in effect nothing better than the nobleman's bond-ſlaves and labourers."

The application of this doctrine to Scotland, muſt appear ſtriking to every man who is in the leaſt acquainted with the ariſtocratical influence which every where exiſts in that country, to the manifeſt oppreſſion

preſſion of the tenantry, who are, in fact, little better than " bond-ſlaves and labourers to their nobility and *lairds;*" and this laſt deſcribtion of men, " who have long been the ſubject of ridicule, ſtill retaining the pride of feudal times in the midſt of meanneſs, repreſs at this moment the ſpirit of improvement in every county in Scotland."

In England, the people are happy under a wiſe and equitable ſyſtem of laws, where every man's rights are now ſo well defined and underſtood, and the weight of the democracy ſo juſtly equipoiſed, as to form an impregnable bulwark againſt the dangerous encroachments of ariſtocratical or monarchical power.

Edward I. ſetting aſide his political conduct with regard to Scotland, which was throughout a ſeries of cruelty and the greateſt injuſtice, was nevertheleſs a wiſe and equitable prince, and deſervedly revered by his ſubjects on that account, as well as for the many excellent laws which he cauſed to be enacted during

during his reign, inſomuch as to obtain, by common conſent, the appellation of the Engliſh Juſtinian.

Sir Matthew Hale, who flouriſhed in the reign of Charles II. has obſerved, that the Engliſh law was greatly improved in the reign of Edward I. and affirms, that till his time it had never received any conſiderable increaſe*. However Mr. Hume, though he ſpeaks

* "Yet the laws," ſays he, "did never in any one age receive ſo great and ſudden an advancement; nay, I think I may ſafely ſay, all the ages ſince his time have not done ſo much in reference to the orderly ſettling and eſtabliſhing of the diſtributive juſtice of this kingdom, as he did within a ſhort compaſs of thirty-five years of his reign, eſpecially about the firſt thirteen years thereof. Indeed, many penal ſtatutes and proviſions, in relation to the peace and good government of the kingdom, have been ſince made. But as touching the common adminiſtration of juſtice between party and party, and accommodating of the rules, and of the methods and orders of proceeding, he did the moſt, at leaſt, of any king ſince William I. and left the ſame as a fixt and ſtable rule of proceeding, very little differing from that which we now hold and practiſe, eſpecially as to the ſubſtance and principal contexture thereof. And ſo," adds he, "in a very great meaſure it has continued the ſame in all ſucceeding ages to this day; ſo that the mark, or *epocha*, we are to take for the true ſtating of the law of England, what

ſpeaks highly of the regulations of Edward, alledges, that, " After he had purſued the hiſtory of England through many barbarous ages, he had only at laſt reached the dawn of civility and ſcience at the death of Richard III. in 1485; and that that was the æra which opened a proſpect both of greater certainty in our hiſtorical narrations, and of being preſented with a ſpectacle more worthy of our attention than was to be met with in any of the preceding reigns *." Mr. Juſtice Blackſtone, in adding to the juſt praiſes of that monarch, tells us, that from his time to that of Henry VIII. there happened very few, and thoſe not very conſiderable alterations in the legal forms of proceedings, and obſerves, " That from this period, from the exact obſervation of *Magna Charta*, rather than from its making, or renewal, in the days of his grand-father and father, that the liberty of Engliſhmen began to rear its head; though the weight

what it is, is to be conſidered, ſtated, and eſtimated, from what it was when this king left it," *Hiſtory of Common Law England*, p. 151, 152, 156.

* Hiſt. of England, vol. 3. p. 296.

of

of the military tenures hung heavy upon it for many years after †."

But the forms of law, or the regular and equitable diſtributions of juſtice, could not, as we apprehend, acquire their due ſtability and force, while the democratical part of the conſtitution lay under the reſtraints of royalty, or was circumſcribed by the exceſſive and arbitrary power which the feudal ſyſtem had beſtowed upon the ariſtocracy. The forms of law, and even the law itſelf, were in thoſe early ages eaſily made to give way to their will and pleaſure, unleſs where their own intereſts were not engaged to warp or overawe the deciſions of juſtice.

It is in the reign of Henry VII. as we conceive, that we are to look for the real commencement of freedom, which naturally involves in it the improvement of law, ſcience, and civility, the ſureſt and ſtrongeſt ſafeguard of political union. It was during this reign that the feudal ſyſtem, ever un-

† Commentaries, vol. 4. book 4. c. 33. p. 420.

friendly

friendly to commerce, and conſequently to freedom, was ſeized with the infirmities of old age, and felt the approaching ſymptoms of a ſpeedy decay; but the cauſes that contributed to its diſſolution, and to the improvement of our religious and civil liberties, it ſhall be our endeavour to unfold in the ſequel, taking for our guide ſuch authorities as have been long held in high eſtimation.

SECTION III.

THE invention of Printing, by JOHN GUTTENBERGEN, at Mentz, in Germany; the introduction of it into England in 1471, by CAXTON, a mercer of London *, and the gradual exerciſe of it there, was of infinite ſupport to the cauſe of freedom, and of courſe gave a heavy blow to the ſlaviſh

* Rapin's Hiſt. of England, vol. 1. p. 588, n. 2.---This matter, however, is diſputed; ſome contending that the invention is due to L. Coſter, who practiſed it at Haerlem in Holland, in 1440.

maxims inculcated and enforced by feudal tyrants. For, what was the feudal ſyſtem, when ſtript of the pomp and refinements of hiſtorians?—A military juriſdiction, ſet up by men of extenſive domains within their own territories, whoſe tenants, or vaſſals, were deprived of even the *ſhadow* of freedom, and were ſubject to be maltreated, plundered, and diſinherited, at their will and pleaſure; inaſmuch as they uſurped a deſperate tyranny over them, in the exerciſe of which they officiated in the double capacity of *proſecutors* and *judges*.

Feudal tenures were, in the beſt of times, but very precarious, and depended almoſt entirely on the *will of the lord*; and therefore muſt be conſidered as extremely offenſive to the ideas of true liberty, ſuch as we entertain at this day. Mr. Hume ſays*, that if any vaſſal, being thrice ſummoned to attend his ſuperior's court, and do fealty, neglected or refuſed obedience, he forfeited all title to his lands. If he denied his tenure, or refuſed his ſervice, he was expoſed

* Hiſt. of England, vol. 1. p. 130---132.

to

to the ſame penalty. Where he ſold his eſtate without licence from his lord, or if he ſold it upon any other terms, or title, than that by which he held it, he loſt all right to it. The adhering to his lord's enemies, deſerting him in war, betraying his ſecrets, or even uſing indiſcreet liberties with his wife or near relations *, might be puniſhed by forfeiture. No man could diſpoſe of his land, either by ſale or will, without the conſent of his ſuperior.

But the greateſt grievance of all was, that the lord, being both a party and a judge in his own cauſe, he was diſpoſed to meaſure the offences, or ſuppoſed offences and delinquincies of his vaſſal, according as it ſuited his own *intereſt* or *humour*. This was a dreadful power placed in the hands of one man, and ſo inconſiſtent with every idea of liberty, that the wiſdom of our anceſtors perceived the neceſſity of giving the death wound to a ſyſtem pregnant with all the diſorders peculiar to the moſt barbarous ages. In ſhort, the enormities of the feudal

* Blackſtone's Comment. vol. 4. b. 4. c. 7. p. 96.

lords grew to the moſt alarming heighth; "They oppreſſed their vaſſals, they infeſted their weaker neighbours, and they invited all diſorderly people to enter into their retinue, and to live upon their lands, and gave them protection in all their robberies and extortions *."

By the military tenure of *knight-ſervice*, the vaſſal was bound to attend his lord to the wars for forty days in every year; the genuine effect of the feudal eſtabliſhment in England; to ranſom his perſon when taken priſoner, under the penalty of a forfeiture of his eſtate; to advance a ſum of money to make his eldeſt ſon a knight, and to contribute to marry the lord's eldeſt daughter, by giving her a ſuitable fortune.

There were originally *benevolences* granted by the tenant to his lord; but, in proceſs of time, they grew to be conſidered as matter of right, and not of diſcretion.—By degrees the tyranny of ſuperiors exact-

* Hume's Hiſt. of England, vol. 1. p. 155.

ed

ed more and more from their vaſſals, ſuch as aids to pay his debts;—aids to enable him to pay aids, or *reliefs*, to his ſuperior lord:—from which laſt, indeed, the king's tenants, *in capite*, were, from the nature of their tenure, exempted, as they held immediately of the king, who had no ſuperior*†‡.

SECTION

* Blackſtone's Comment. vol. 2. book 2. p. 62, 63, 64. And to chapters 4th and 5th, vol. 2. of the Commentaries of this great and virtuous man we refer the reader, for more particular information on this ſubject, which is there treated of with method and perſpicuity.

† In giving this ſynopſis of the feudal ſyſtem, it may not be improper to ſhew what a learned author ſays of it in its origin.

"The feudal inſtitutions," ſays Dr. Gilbert Stuart, "were founded in freedom, and had freedom for their object. The connections of ſuperior and vaſſal in their origin, and during a long period of time, were tender and affectionate. They acknowledged the ſame intereſts, and were animated by the ſame paſſions. Their cordiality was extreme, and the incidents of tenure, forming a train of mutual offices and reciprocal attentions, foſtered and prolonged their intercourſe. In this condition of affairs, the individual and the ſubject were fortunate and happy. The vaſſals of a ſuperior conſtituted his ſtrength and importance. They added to his magnificence in the ſeaſons of peace. They were his power

in

SECTION IV.

LEARNING, which had hitherto been in a great meaſure confined within the walls of

in the ſeaſons of hoſtility; and he ſecured and maintained their attachment by kindneſſes and liberality. But when the cuſtoms, and uſages, and ſituation which had given exiſtence to the feudal inſtitutions, were decayed and altered, the inſtitutions themſelves were aſſailed with violence. Selfiſhneſs and *commercial ideas* could not accord with the generous principles of the Gothic and Celtic manners. In a ſituation which was not fitted for the feudal aſſociation, it was to be agitated in an unhappy direction. The ſpirit of cordiality, which had bound together the greater and the lower ranks of men, died away. The ſuperior was to conſider the poſſeſſions of the vaſſal as depredations from his domain. The vaſſal was to be diſguſted with the pride and the claims of the ſuperior. The incidents of tenure, which had promoted happineſs and friendſhip, were to become ſources of grievance and oppreſſion. A general diſſatisfaction pervaded every order of the ſtate; and ſociety, which before had been tranquil and ſecure, was now deformed with frauds, ſuſpicions, and cruelty." *Obſervations concerning the Public Law and Conſtitutional Hiſtory of Scotland*, 122, 123.

‡ In the Highlands of Scotland the oppreſſions of the feudal ſyſtem are put in practice to this day. Reſiding on mountains, and in glens, the Highlanders are ſtrangers to

that

of a monaſtery, began gradually to emerge from that obſcurity, and, with the progreſs of

that civilization which pervades every part of the low country. Their towns are few, and thinly inhabited; and their chief employment is the rearing of cattle. Manufactures or commerce they hardly know any thing of but by name. They live in a continual ſtate of exquiſite poverty, in the midſt of a ſoil hardly able to produce the common neceſſaries of life. However, a Highlander will boaſt that he is of the ſame family with his chieftain, whoſe name he bears, and whom he worſhips almoſt to adoration. Their idleneſs adds to the calamities attending their condition; yet their vanity, which is exceſſive, excites them to deſpiſe a lowland mechanic, who is his own maſter, lives independent, and brings up his family with credit; while the Highlander, averſe from labour, and unable to ſubſiſt at home, is either obliged to become a day-labourer elſewhere, or have recourſe for a livelihood to that moſt honourable of all profeſſions to ſuch men—the profeſſion of arms.

The effects of ariſtocratical power were felt in an extreme degree by this unfortunate race of men, after the fatal ſurrender of General Burgoyne's army at Saratoga. Some of the Highland nobility, to ſhew their loyalty to their Sovereign, and to aſſiſt in the reparation of that diſaſter, ſet recruiting parties to work among their vaſſals. Several regiments were by various ſtratagems ſoon compleated by them. But, if my information is well founded, the moſt dreadful tyranny was exerciſed on this occaſion—a tyranny which will redound eternal diſhonour on thoſe principals and ſubordinates who were concerned in it. Sons, who were the prop of their aged parents, dragged from their preſence by force;

of religious reformation, diſpelled apace the darkneſs which had hitherto hid from mankind thoſe rights which nature has bountifully beſtowed upon *all* her children in common. Some of the valuable remains of ancient learning had been reſcued from the rage of thoſe barbarians who had overturned the Roman empire. The ſtudy of them began to be introduced by degrees, chiefly by means of tranſlation. The true principles of civil liberty, and real greatneſs, which they taught, inſpired thoſe who read them with generous ſentiments, and qualified them to draw compariſons, that tended to diſcover the ſervility of their condition, and by the uſe of the *Preſs*, which multiplying copies at will, enabled them to communicate far and near to their fellow

force;—the tears and entreaties of furrowed cheeks and grey hairs were of no avail—it was like preaching to the deſart; and the hapleſs ſon turning his head round, while guarded by the engines of his chieftain, to bid a laſting adieu to every thing dear to him, felt the keeneſt pangs of anguiſh on beholding his children weeping and tearing their hair, and his mother fainting away in his father's arms, before his own threſhold! Whither had the guardian angel of freedom fled, while this tragedy was acting?

citizens

citizens, the bondage they endured from the abuſes of ariſtocratical authority.

But, perhaps there was no event which tended farther to the advancement of liberty, and the improvement of mankind, than one which has not been much remarked, the accidental finding of a copy of Juſtinian's Pandects, about the year 1130, in the town of Amalfi, in Italy *. The Eccleſiaſtics who had leiſure, and ſome inclination to ſtudy, immediately adopted with zeal this excellent ſyſtem of juriſprudence, and ſpread the knowledge of it throughout every part of Europe. Beſides the intrinſic merit of the performance, it was recommended to them by its original connection with the imperial city of Rome, which, being the ſeat of their religion, ſeemed to acquire a new luſtre and authority, by the diffuſion of its laws over the weſtern world. In leſs than ten years after the diſcovery of the Pandects, Vacarius, under the protection of Theobald, archbiſhop of Canterbury, read

* Blackſtone's Com. vol. 1. p. 81. Hume, vol. 3. p. 299.

public lectures of civil law in the univerſity of Oxford*; and the clergy every where, by their example, as well as exhortation, were the means of diffuſing the higheſt eſteem for this new ſcience. That order of men, having large poſſeſſion to defend, was, in a manner, neceſſitated to turn their ſtudies towards the law; and their properties, being often endangered by the violences of the princes and barons, it became their intereſt to enforce the obſervance of general and equitable rules, from which alone they could receive protection. As they poſſeſſed almoſt all the knowledge of the age, and were almoſt alone acquainted with the habits of thinking, the practice, as well as ſcience of the law, fell moſtly into their hands: and though the cloſe connexion, which without any neceſſity they formed between the canon and civil law, begat a jealouſy in the laity of England, and prevented the Roman juriſprudence from becoming the municipal law of the country, as was the caſe in many ſtates of Europe, a great part

* Blackſtone's Com. vol. 1. p. 18. Hume, vol. 3. p. 299.

of it was ſecretely transferred into the practice of the courts of juſtice; and the imitation of their neighbours made the Engliſh gradually endeavour to raiſe their own law from its original ſtate of rudeneſs and imperfection.

It is eaſy to ſee what advantages Europe muſt have reaped, by its inheriting at once from the ancients ſo complete an art, which was alſo ſo neceſſary for giving ſecurity to all other arts; and which, by refining, and ſtill more, by beſtowing ſolidity on the judgment, ſerved as a model to farther improvements. The ſenſible utility of the Roman law, both to public and private intereſt, recommended the ſtudy of it, at a time when the more exalted and ſpeculative ſciences carried no charms with them; and thus the laſt branch of ancient literature, which remained uncorrupted, was happily the firſt tranſmitted to the modern world.—For it is remarkable, that in the decline of Roman learning, when the philoſophers were univerſally infected with ſuperſtition and ſophiſtry, and the poets and hiſtorians

with barbariſm, the lawyers who, in other countries, are ſeldom models of ſcience or politeneſs, were yet able, by the conſtant ſtudy and cloſe imitation of their predeceſſors, to maintain the ſame good ſenſe in their deciſions and reaſonings, and the ſame purity in their language and expreſſions.

What beſtowed an additional merit on the civil law, was the extreme imperfection of that juriſprudence, which preceded it among all the European nations, eſpecially among the Saxons or ancient Engliſh. The abſurdities which prevailed at that time in the adminiſtration of juſtice, may be conceived from the authentic monuments which remain of the ancient Saxon law; where a pecuniary commutation was received for every crime, where ſtated prices were fixed for men's lives and members, where private revenges were authorized for all injuries, where the uſe of the ordeal, corſnet, and afterwards of the duel, was the received method of proof, and where the judges were ruſtic freeholders, aſſembled of a ſudden, and deciding a cauſe from one debate

or altercation of the parties. Such a ſtate of ſociety was very little advanced beyond the rude ſtate of nature: violence univerſally prevailed, inſtead of general and equitable maxims; the pretended liberty of the times was only an incapacity of ſubmitting to government; and men, not protected by law in their lives and properties, ſought ſhelter, by their perſonal ſervitude and attachments under ſome powerful chieftain, or by voluntary combinations.

The gradual progreſs of improvement raiſed the Europeans ſomewhat above this uncultivated ſtate; and affairs in this iſland particularly, took early a turn, which was more favourable to juſtice and to liberty. Civil employments and occupations ſoon became honourable among the Engliſh:—the ſituation of that people rendered not the perpetual attention to wars ſo neceſſary, as among their neighbours, and all regard was not confined to the military profeſſion: the gentry, and even the nobility, began to deem an acquaintance with the law a neceſſary part of education: they were leſs diverted than

than afterwards from ſtudies of this kind by other ſciences; and, in the age of Henry VI. as we are told by Sir John Forteſcue, there were in the inns of court about two thouſand ſtudents, moſt of them men of honourable birth, who gave application to this branch of civil knowledge: a circumſtance which proves, that a conſiderable progreſs was already made in the ſcience of government, and which procraſtinated ſtill a greater.

Meanwhile, as cities and towns were far from being ſo populous as at this day*, and

* By Doom's-day Book, which William the Conqueror cauſed to be made in 1081, for the purpoſe of aſcertaining by a ſurvey the number of acres in each man's eſtate, throughout the kingdom; what he was wont to pay in Saxon reigns; and how much he had been taxed of late years, ſince the Revolution;—what ſtock each had of horſes, cattle, ſheep, &c.;—how much ready money in his houſe;—what he owed, and what was owing to him. All this was ſet down in this Book of the Day of Judgement. Rapin, vol. 1. p. 177. Hume, vol. 1. p. 275.——By this book it appears, that cities, at the Conqueſt, were little better than villages. York itſelf, though it was always the ſecond, at leaſt the third city in England, contained then but 1418 families. Norwich contained 738 houſes; Exeter, 315; Ipſwich, 138; Northampton, 60; Hertford, 146; Canterbury, 262; Bath, 64; Southampton, 84; and Warwick, 225.—Ibid. 211. See alſo Brady of Boroughs.

while

while the people were chiefly ſcattered throughout the country, in the occupations of agriculture, the ſtretches of princely and ariſtocratical authority were often ſeverely felt by the ſubject. But, when the ſources of wealth were opened to the nation, by the diſcovery of new worlds*, and the uſe

* On the 2d of Auguſt, 1492, in Henry VII.'s reign, Chriſtopher Columbus, a Genoeſe, in the ſervice of Spain, ſet out from thence on his memorable voyage for the diſcovery of the weſtern world, which he effected. Hume, vol. 3. p. 404. Rapin, vol. 2. p. 672.——In 1496, a patent was granted by Henry VII. to John Cabot, a Venetian, and to three of his ſons, to go in queſt of new lands with Engliſh colours. Rapin, vol. 2. p. 678. Hume, vol. 3. p. 405, calls him Sebaſtian Cabot, and fixes the time to 1498.—In 1497, Vaſquez de Gama, a Portugueſe, ſailed to the Eaſt-Indies, by the Cape of Good Hope. Hume, vol. 3. p. 404. —About the ſame time, South-America was diſcovered by Americus Veſpuſius.—In 1519, the Emperor Charles V. received the news of the diſcovery, and beginning of the conqueſt of Mexico and New-Spain.—Rapin ſays, "It was the gold and ſilver wherewith the new world furniſhed Spain, that contributed moſt to render Charles ſo great and powerful. Beſides, money growing more plenty by the trade carried on by other countries with Spain, was the cauſe of the appearance of more numerous armies, greater magnificence in princes courts, and the dowries of princeſſes, being much larger than before. By the aſſiſtance of the wealth of the new world, Charles V. and Phillip II. aſpired to univerſal monarchy." Vol. 2. p. 742.

of

of the compaſs and quadrant came to be better underſtood, commerce, which had hitherto hung her head in dejection, populated thoſe places that were thinly inhabited before, becauſe the value of a mercantile ſituation was then very little known.

Thoſe whoſe ideas roſe above the ſubordinate employments of the plough, and the herding of cattle, forſook their former habitations, and repaired to maritime cities and towns, as the theatres of wealth and independence. An inundation of wealth flowed in upon the merchants, and the middling rank of men; while the two great eſtates of the kingdom, which had hitherto balanced the prerogative, the nobility and the clergy, were greatly impoveriſhed and weakened.

The popiſh clergy, detected in their frauds and abuſes, expoſed to the reſentment of the populace, and ſtripped of their lands and revenues, ſtood trembling for their very exiſtence. The nobles, enervated by the refinements of luxury, and fired with diſdain

dain at being rivalled in magnificence by the opulent citizens, fell into enormous expences, to gratify which, they were permitted, by the policy of the times, to diſſipate their overgrown eſtates, and alienate their ancient patrimonies. This gradually reduced their power and their influence, within very moderate bounds: while royalty, by the ſpoil of the monaſteries, and the great increaſe of the cuſtoms, grew rich, independent, and haughty; and the commons were not yet ſenſible of the ſtrength they had acquired, nor urged to examine its extent by new burthens, or oppreſſive taxations, during the ſudden opulence of the Exchequer. Intent upon acquiring new riches, and happy in being freed from the inſolence and tyranny of the orders more immediately above them, they never dreamt of oppoſing the prerogative to which they had been ſo little accuſtomed; much leſs of taking the lead in oppoſition, to which by their weight and their property they were now entitled.

The minds of the people having become thus enlightened by ſcience, enlarged by obſervation, and an extenſive knowledge of the world, they began to entertain a more juſt opinion of the immutable dignity and rights of mankind. The common attainments of reading and writing, which were either thought unneceſſary or too expenſive by ſome, and little cultivated by others, in their former rude ſtate, began to be univerſally conſidered by them, with the addition of the knowledge of numbers, as indiſpenſible qualifications to fit them for the more elevated purſuits of trade and commerce.

The remembrance of villenage*, and other ſlaviſh tenures, under which they had ſo

* Villenage was a baſe tenure of lands and tenements, whereby the tenant was bound to do all ſuch ſervices as the lord commanded;—to carry dung into his fields, to plough his ground, to ſow and reap his corn, and even *to empty his jakes*. The villani were of that ſervile condition, that they were uſually ſold with the farm to which they belonged, and were a kind of ſlaves, and uſed as ſuch by the lord, who might chaſtiſe them, and put them out of his lands and tenements at will. Bracton, lib. 2. c. 8. Blackſtone's Com. vol. 2. b. 2. c. 5. p. 61.; c. 6. p. 92, 93. Hume, vol. 1. p. 211.

ſo long groaned, from the oppreſſions of ariſtocratical tyranny, filled their minds with

p. 211, 212. Rapin, vol. 1. p. 41.; 150, 151. "There were in England two ſorts of villains; a villain in groſs, who was immediately bound to the perſon of his lord and his heirs: the other, a villain regardant to a manour; that is, belonging or being annexed to a manour. There are not truly any villains now, though the law concerning them ſtands unrepealed. The ſucceſſors of the bond-men, or villains, are the copyholders, who, though time has dealt favourably with them in other reſpects, yet they ſtill retain one mark of their original ſervitude: for, as of old, villains were not reckoned as members of the commonwealth, but part and parcel of their owners ſubſtance, ſo were they therefore excluded from any ſhare in the legiſlature; and their ſucceſſors ſtill continue without any right (but moſt unjuſtly) to vote at elections by virtue of their copyholds. Ibid. n. 1.——Sir William Temple tells us, that "after the Saxons had expelled the Britons out of the faireſt and beſt of their ancient poſſeſſions, and driven their greateſt numbers, who eſcaped the conqueror's fury, into Wales and Cornwall, countries mountainous and barren; the weak and poor remainders of the old Britons, who were ſcattered among the Saxons in England, were wholly ſpoiled of their lands and goods, which were fallen under the mercy of the conquerors, who, ſharing them all among themſelves, left the remaining Britons in a condition of downright ſervitude, uſed them for tilling ground, feeding cattle, and other ſervile works, in houſe or field, ſometimes farming out certain parts of land to them at certain rents and profits, but held always at the will and pleaſure of the landlord. The chil-

with the deepeſt diſguſt, and ſtruck them with the greater force, when compared to the happineſs and affluence they enjoyed, on being emancipated from a condition not to be borne by any man, whoſe heart was capable of being enkindled with the leaſt ſpark of freedom.

When collected into large bodies, animated with one ſoul in the preſervation of their inherent rights, they proved formidable to the arbitrary deſigns of the prince and his nobles, who, from open hoſtility againſt them, were forced to act with more caution, and a greater ſhew of juſtice, in thoſe attempts to enſlave the people, which reign predominant in the minds of tyrannical and ambitious men.

By theſe gradations, the matchleſs freedom of Engliſhmen advanced to maturity,

dren that were born of theſe miſerable people belonged to the lord of the ſoil, like the reſt of the ſtock or cattle upon it; and thus began *villenage* in England, which laſted till the time or end of Henry VII." Introduct. to the Hiſtory of England, p. 56——59.

and

and by theſe means the foundations of the feudal ſyſtem received ſo rude a ſhock, that little remained to effect the total overthrow of its ſuperſtructure. The people, by degrees, arrived at their due weight in the ſcale of the conſtitution; and conſequences of the utmoſt importance to the intereſts of civil liberty immediately followed upon it. The parliament, which, of courſe, had reſcued itſelf from the indignities and reſtraints under which it had languiſhed, from the practices of arbitrary princes, caught the generous flame of liberty; and viewing the enormities reſulting from feudal tenures, through that medium, by 12th Charles II *. with

* By chap. 24. it is enacted, "That the court of wards and liveries, and all wardſhips, liveries, primer ſeiſins, and ouſterlemains, values and forfeitures of marriages, by reaſon of any tenure of the king or others, be totally taken away. And that all fines for alienations, tenures by homage, knights-ſervice, and eſcutage, and alſo aids for marrying the daughter, or knighting the ſon, and all tenures of the king *in capite*, be likewiſe taken away. And that all ſorts of tenures, held of the king or others, be turned into free and common ſoccage; ſave only tenures in frankalmoign, copyholds, and the honorary ſervices (without the ſlaviſh part) of grand ſerjeanty." "A ſtatute," ſays Blackſtone,

with one ſtroke cut looſe the fetters of feudal tyranny, and reſtored to the people the enjoyment of their natural rights, of which they had been deprived, in an extreme degree, ever ſince the Norman conqueſt *.

ſtone, vol. 2. book 2. p. 77. " which was a greater acquiſition to the civil property of this kingdom than even *Magna Charta* itſelf: ſince that only pruned the luxuriancies that had grown out of the military tenures, and thereby preſerved them in vigour; but the ſtatute of King Charles extirpated the whole, and demoliſhed both root and branches."

* The feodal polity, which had been by degrees eſtabliſhed over all the continent of Europe, ſeems not to have been received into this part of our iſland, at leaſt not univerſally, and as a part of the national conſtitution, till the reign of William the Norman (*a*). Not but that it is reaſonable to believe, from abundant traces in our hiſtory and laws, that even in the times of the Saxons, who were a ſwarm

(*a*) " *Feodorum ſervitutes in Britaniam noſtrum primus invexit Gulielmus ſenior conqueſtor nuncupatus; qui lege ea, e Normania tradueta Angliam totam ſuis diviſit commilitibus.*" Sir Henry Spelman's Gloſſary, p. 218.—" The introduction of the feudal law into England by William the Conqueror, had much infringed the liberties, however imperfect, enjoyed by the Anglo-Saxons in their ancient government, and had reduced the whole people to a ſtate of vaſſalage under the king or barons, and even the greater part of them to a ſtate of real ſlavery." Hume, vol. 2. p. 77.

SECTION

SECTION V.

THE right of trial by jury having been eſtabliſhed, or rather confirmed, with many other advantages, purchaſed by the wiſdom and valour of our anceſtors, in the weak and tyrannical reign of King John, by *Magna Charta*, was the forerunner of other conſtitutional advantages, and had ſome operation to the prejudice of feudality, though, in the beginning, perhaps not very perceptible. By the 46th article of the

ſwarm from what Sir William Temple calls the great northern hive (*b*), ſomething ſimilar to this was in uſe (*c*); yet not ſo extenſively, nor attended with all the rigour that was afterwards imported by the Normans. For the Saxons were firmly ſettled in this iſland, at leaſt as early as the year 600 (*d*), and it was not till two centuries after, that feuds arrived to their full vigour and maturity, even on the continent of Europe (*e*).

(*b*) Introd. to the Hiſt. of Eng. p. 44.

(*c*) Dr. Stuart on the Public Law and Conſtitution of Scotland, p. 155.

(*d*) Introd. to the Hiſt. of England, p. 60.

(*e*) Craig, Jus Feudale, lib. 1. dieg. 4. Blackſtone's Com. vol. 2. b. 2. c. 4. p. 48.

Great

Great Charter, "No *freeman* ſhall be taken or impriſoned, or diſſeiſed, or outlawed, or baniſhed, or any ways deſtroyed; nor will we paſs upon him, or commit him to priſon, unleſs by the legal judgment of his peers, or by the law of the land." And here it may not be improper to give a ſummary account of this charter, and the manner in which it was extorted from the king, whereby the reader may ſee what oppreſſions the Engliſh had been liable to ſince the conqueſt, and what privileges they gained on this occaſion.

In John's reign, the rigours of the feudal tenures, and the foreſt laws, were ſo warmly kept up, that they occaſioned many inſurrections of the barons, or principal feudatories. In 1214, the barons, fired with indignation at the tyranny of their ſovereign, formed a confederacy to obtain a redreſs of their grievances, and a re-eſtabliſhment of the good laws of his predeceſſors, particularly thoſe of St. Edward. In this attempt, they had the concurrence of Langton, archbiſhop of Canterbury, a man whoſe

whoſe memory, though he was obtruded on the nation by a palpable encroachment of the ſee of Rome, and againſt the inclinations of the king, ought always to be reſpected by the Engliſh. This prelate, whether he was moved by the generoſity of his nature and his affection to public good, or had entertained an animoſity againſt John, on account of the ſtrenuous oppoſition of that prince to his election; or thought that an acquiſition of liberty to the people would ſerve to increaſe and ſecure the privileges of the church; had formed the plan of reforming the government. Soon after, in a private meeting with ſome principal barons at London, he ſhewed them a copy of Henry I.ſt's charter, which he ſaid he had happily found in a monaſtery; and he exhorted them to inſiſt on the renewal and obſervance of it. The barons ſwore they would ſooner loſe their lives than depart from ſo reaſonable a demand.

The confederacy now began to ſpread wider, and to comprehend almoſt all the barons in England; and a new and more

numerous meeting was ſummoned in November, by Langton, at St. Edmondsbury, under colour of devotion; where they came to the reſolution, to demand of the king the confirmation of the charter of Henry I.* This charter contained in ſubſtance the liberties enjoyed by the Engliſh during the dominion of the Saxon kings. The barons, inflamed by the eloquence of Langton, ſolemnly took an oath, before they departed, to adhere to each other; to inſiſt on their demands, and to make endleſs war upon the king till he ſhould ſubmit to grant them.

There had ariſen a violent diſpute † between Innocent III. the reigning pontiff, and King John, regarding the election of an Archbiſhop of Canterbury in the room of Hubert, who had lately died. The pope commanded the Monks to elect Langton. They remonſtrated againſt the impropriety of electing him without the king's conſent; but Innocent told them, that the conſent of princes was needleſs in elections made in his

* Rapin, vol. 1. p. 274. Hume, vol. 2. p. 79.

† 1205.

preſence

preſence; ſo that with reluctance they choſe Langton, who was by birth an Engliſhman.

John was inflamed to fury when he heard of this attempt of the church of Rome; and immediately vented his rage on the Monks of Chriſt-Church, whom he found inclined to ſupport the election made by their brethren at Rome. He ſent two knights of his retinue, men of ferocious tempers, to expel them the convent, and take poſſeſſion of their revenues. Theſe knights entered the monaſtery with drawn ſwords, commanded the prior and monks to depart the kingdom, threatening, in caſe of diſobedience, inſtantly to burn them, and lay their convent in aſhes *. The pope, who was a man of ſagacity, foreſaw that, from ſuch violence, John, who was by no means popular, would finally ſink in the conteſt; admoniſhed John not to oppoſe God and the church any longer, nor perſecute that cauſe for which the holy martyr St. Thomas

* Hume, vol. 2. p. 60, 61, 79. Rapin, vol. 1. p. 267, 268, calls them the Monks of St. Auguſtin.

a-Becket had ſacrificed his life, and which had exalted him equal to the higheſt ſaints in heaven. The king ſtill perſiſted in rejecting the new-elected primate, and to reſtore the Monks of Chriſt-Church to their rights and poſſeſſions. Innocent therefore, at laſt, fulminated the ſentence of interdict, which he had for ſome time ſuſpended over him*. Immediately divine ſervice ceaſed in all the churches, and the ſacraments were no longer adminiſtered, except to infants and dying perſons. Public prayers, and all eccleſiaſtical functions were laid aſide. The church-yards were ſhut up, and the bodies of the dead thrown into ditches, like dogs, without any prieſt daring, or being willing, to perform funeral rites over them. Marriages were celebrated in church-yards, and that every action in life might bear the marks of this dreadful ſituation, the people were prohibited the uſe of meat, as in Lent, or times of the higheſt penance; were debarred from all pleaſures and entertainments,

* Matt. Paris, 226.—Matt. Weſtminſter, 268.

and

and were even forbidden ſo much as to ſhave their beards *.

In the mean time, John oppoſed his temporal to ſpiritual terrors. He confiſcated the eſtates of all the clergy who obeyed the interdict †; baniſhed the prelates, confined the monks in their convent, and gave them only ſuch a ſmall allowance as would ſuffice to provide them with food and raiment. As the ſentence of interdict had not produced the deſired effect, Innocent gave authority to the biſhops of London, Ely, and Worceſter, to denounce the ſentence of excommunication againſt him ‡. No ſooner was the excommunication known, than the effects of it appeared.

Geoffrey, archdeacon of Norwich, who was one of the judges of the Exchequer, being informed of it while ſitting on the bench, obſerved to his colleagues the danger of ſerving under an excommunicated

* Rapin, vol. 1. p. 269. Hume, vol. 2. p. 63.

† Matt. Paris, 226. A. D. 1208.

‡ Ibid 228. A. D. 1209.

king,

king, and immediately left his chair, and departed the court. John threw him into priſon, and ordered his head to be covered with a great leaden cope, which, with other ſevere uſage, put an end to his life.

The biſhops, finding themſelves expoſed to the jealouſy of the king, gradually ſtole out of the kingdom; and at laſt, there only remained three prelates to perform the functions of the epiſcopal office. Many of the nobility, terrified by John's tyranny, and obnoxious to him on different accounts, alſo withdrew beyond the ſea. John was alarmed at his dangerous ſituation, and, in the hope of cloſing the breach, deſired a conference with Langton at Dover. Langton demanded, that full reſtitution and reparation ſhould be made to all the clergy; but the king, being unable or unwilling to comply with this demand, the conference came to nothing *.

The next gradation of papal ſentences was to abſolve John's ſubjects from the oaths

* Hume, vol. 1, p. 68, 69. Rap. vol. 1, p. 270, 271.

of

of fidelity and allegiance, and to declare every one excommunicated who had any commerce with him in public or in private; and this ſentence was accordingly pronounced againſt him, with great ſolemnity*. But as John ſtill perſevered in his contumacy, there remained nothing but the ſentence of depoſition, as the laſt thunderbolt to be hurled againſt this impotent monarch, and which was denounced againſt him with all its ſolemnities.

This ſentence, however, required an armed force to execute it. The pope therefore commiſſioned Philip, king of France, to enforce it, promiſing him, as a reward, a remiſſion of all his ſins, and endleſs ſpiritual benefits, together with the crown of England, to him and his heirs for ever†, when once he had dethroned the preſent tyrant. Philip embraced this ſplendid offer. He levied a mighty army—collected a fleet of 1700 veſſels, and gathered together ſuch a force, as ſeemed equal to the greatneſs of

* Mat. of Weſtminſter, 269. A. D. 1211.

† Matt. Paris, 232. A. D. 1212.

the

the enterprize. John, on the other hand, ſummoned his military tenants to meet him at Dover, to defend the kingdom in this dangerous extremity. A great number appeared, and he ſelected an army of 60,000 men, a power invincible, had they been united in affection to their prince, and animated with a becoming zeal for the defence of their native country. But the people were ſwayed by ſuperſtition, and regarded their king with horror, as anathematized by papal cenſures; and the barons, lying under the ſame prejudices, were all diſguſted by his tyranny, and were, many of them, ſuſpected of holding a ſecret correſpondence with the enemy *.

Pandolph, whom the pope had choſen for his legate, and appointed to head this important expedition, deſired a conference with John at Dover; which being readily granted, Pandolph repreſented to him in ſuch ſtrong colours his loſt condition, the diſaffection of his ſubjects, the ſecret combination of his vaſſals againſt him, the

* Rap. vol. 1, p. 271, 272. Hume, vol. 2, p. 70, 71.

mighty

mighty armament of France, that John yielded at diſcretion, and ſubſcribed to all the conditions which Pandolph was pleaſed to impoſe upon him. He promiſed, among other articles, to ſubmit himſelf entirely to the judgment of the pope, to acknowledge Langton for primate, to reſtore all the exiled clergy and laity, who had been baniſhed on account of the conteſt, that he would make them full reparation for all damages, and receive into favour all thoſe who had adhered to the pope *. Four barons ſwore along with the king, to the obſervance of this ignominious treaty. But the ignominy of the king was not yet carried to its full height. Pandolph required of him, as the firſt trial of his obedience, to reſign his kingdom to the church; and he perſuaded him, that he could no ways ſo effectually diſappoint the French invaſion, as by thus putting himſelf under the immediate protection of the apoſtolic ſee. John, lying under the agonies of preſent terror, made no ſcruple of ſubmitting to this mortifying

* Rapin, vol. 1. p. 272. Hume, vol. 2. p. 71.

condition. He paſſed a charter, in which he ſaid, that, not conſtrained by fear, but of his own free will, and by the common advice and conſent of his barons, he had, for the remiſſion of his own ſins and thoſe of his family, reſigned England and Ireland to God, to St. Peter and St. Paul, and to Pope Innocent and his ſucceſſors in the apoſtolic chair *: he agreed to hold theſe dominions as feudatory of the church of Rome, by the annual payment of a thouſand merks, and he ſtipulated, that, if he or his ſucceſſor ſhould ever preſume to revoke or infringe this charter, they ſhould inſtantly, except upon repentance, forfeit all right to their dominions †.

In conſequence of this agreement ‡, he did homage to the pope, in the perſon of Pandolph, his legate, with all the ſubmiſſive rites of the feudal law. He came diſarmed into the legate's preſence, who was ſeated

* Rymer's Feodera, tom. 1, p. 176. Matt. Paris, 236. Matt. Weſtminſter, 271. A. D. 1213. anno 15th John.

† Rap. vol. 1, p. 272. Hume, vol. 2, p. 72.

‡ 15th May, A. D. 1213.

on

on a throne; he flung himſelf on his knees before him; he lifted up his joined hands, and put them within thoſe of Pandolph; he ſwore fealty to the pope, and he paid part of the tribute impoſed upon him, in token of ſubmiſſion *.

The church had recalled the ſeveral anathemas pronounced againſt John, by the ſame gradual progreſs with which ſhe had at firſt iſſued them. By receiving his homage, his depoſition had been virtually annulled, and his ſubjects were again bound by their oaths of allegiance. The exiled prelates had returned in great triumph, with Langton at their head; and the king, hearing of their approach, went forth to meet them, and throwing himſelf on the ground before them, he entreated them, with tears, to have compaſſion on him and the kingdom. The primate, ſeeing theſe marks of ſincere penitence, led him to the chapter-houſe of Wincheſter, and there adminiſtered an oath to him †, by which he again ſwore

* Rap. vol. 1, p. 272.

† 20th July, A. D. 1213.

fealty and obedience to Innocent and his ſucceſſors; promiſed to love and defend the church and the clergy; engaged that he would eſtabliſh the good old laws of his predeceſſors, particularly thoſe of St. Edward, and would aboliſh the wicked ones; and expreſſed his reſolution of maintaining juſtice in all his dominions *.

But, to return to the diſcontents of the barons, from this view of the *ne plus ultra* of Romiſh ſuperſtition and human embicility. The barons appeared in London upon the day † which had been appointed by them at their meeting at St. Edmondſbury, and demanded of the king, that, in conſequence of his own oath before the primate, he ſhould grant them a renewal of Henry's charter, and a confirmation of the laws of St. Edward.

The king, alarmed at their power and unanimity, required a delay, promiſing, that at the feſtival of Eaſter, he would give

* Hume, vol. 2, p. 75. Rap. vol. 1, p. 273.
† 6th January, A. D. 1215.

them

them an anſwer to their petition. On the approach of Eaſter, the malcontent barons met by agreement at Stamford, to receive the king's anſwer to their petition, accompanied by 2000 knights, beſides their retainers, and inferior perſons without number. Elated with their power, they advanced in a body to Brackley, within fifteen miles of Oxford, where the court then reſided. There they received a meſſage from the king, by the archbiſhop of Canterbury, and the Earl of Pembroke, deſiring to know what thoſe liberties were, which they ſo zealouſly challenged from him. They delivered to theſe meſſengers a memorial, containing the chief articles of their demands, which was no ſooner ſhewn to the king, than he burſt into a furious paſſion, and aſked, Why the barons had not alſo demanded of him his kingdom? ſwearing, that he would never grant them ſuch liberties, as muſt reduce himſelf to ſlavery *.

No ſooner were the confederated nobles informed of John's reply, than they choſe

* Rapin, vol. 1. p. 275, 276. Hume, vol. 2. p. 83, 84.

Robert

Robert Fitzwalter their general, and proceeded without farther ceremony to levy war upon the king. They beſieged the caſtle of Northampton fifteen days, though without ſucceſs. The gates of Bedford caſtle were willingly opened to them by Beauchamp its owner. They advanced to Ware, in their way to London, where they held a correſpondence with the principal citizens. They were received without oppoſition into that capital, and, ſenſible of their force, they iſſued proclamations, requiring the other barons to join them, menacing them, in caſe of refuſal or delay, with committing devaſtations on their houſes and eſtates. They made incurſions from London, and laid waſte the king's parks and palaces; and all the barons who had hitherto appeared to ſupport the royal party, were glad of this pretence for openly joining their friends. The king was left at Odiham in Surry with only ſeven knights, and after trying ſeveral expedients to temporiſe and elude the blow, he found himſelf at laſt obliged to ſubmit at diſcretion*.

* Rap. vol 1, p. 276. Hume, vol. 2, p. 84.

A conference between the king and the barons was appointed at Runnemede*, between Windſor and Staines, a place which has ever ſince been extremely celebrated, on account of this great event. The two parties encamped apart, like open enemies, and, after a debate of a few days, the king, with a facility ſomewhat ſuſpicious, ſigned and ſealed the charter which was required of him†. This famous deed, commonly called the Great Charter, either granted or ſecured very important liberties and privileges to every order of men in the kingdom: to the clergy, to the barons, and to the people. The freedom of elections was ſecured to the clergy; the former charter of the king was confirmed, by which the neceſſity of a royal conge d'elire and confirmation was ſuperceded; all check upon appeals to Rome was removed, by the allowance granted every man to depart the kingdom at pleaſure; and the fines to be impoſed on the clergy for any offence, were ordained to be

* Magna Charta, 15th June, A. D. 1215.

† 19th June, A. D. 1215.

proportional

proportional to their lay eſtates, not to their eccleſiaſtical benefices.

The privileges granted to the barons were either abatements in the rigour of the feudal law, or determinations in points which had been left by that law, or had become by practice arbitrary and ambiguous. The reliefs of heirs ſucceeding to a military fee were aſcertained; an earl's and baron's at a hundred marks, and a knight's at a hundred ſhillings. It was ordained by the charter, that, if the heir be a minor, he ſhall, immediately upon his majority, enter upon his eſtate, without paying any relief; the king ſhall not ſell his wardſhip; he ſhall levy only reaſonable profits upon the eſtate, without committing waſte or hurting the property; he ſhall uphold the caſtles, houſes, mills, parks, and ponds; and if he commit the guardianſhip of the eſtate to the ſheriff, or any other, he ſhall previouſly oblige them to find ſurety to the ſame purpoſe. During the minority of a baron, while his lands are in wardſhip, and are not in his own poſſeſſion, no debt which he owes to the Jews

ſhall

ſhall bear any intereſt. Heirs ſhall be married without diſparagement, and before the marriage be contracted, the neareſt relations of the perſon ſhall be informed of it. A widow, without paying any relief, ſhall enter upon her dower, the third part of her huſband's rents; ſhe ſhall not be compelled to marry, ſo long as ſhe chuſes to continue ſingle; ſhe ſhall only give ſecurity never to marry without her lord's conſent. The king ſhall not claim the wardſhip of any minor, who holds lands by military tenure of a baron, on pretence that he alſo holds lands of the crown, by ſoccage or any other tenure. Scutages ſhall be eſtimated at the ſame rate as in the time of Henry I.; and no ſcutage or aid, except in the three general feudal caſes, the king's captivity, the knighting of his eldeſt ſon, and the marrying of his eldeſt daughter, ſhall be impoſed but by the great council of the kingdom; the prelates, earls, and great barons, ſhall be called to this great council, each by a particular writ; the leſſer barons by a general ſummons of the ſheriff. The king ſhall not ſeize any baron's land for a debt to the crown, if the ba-

ron poſſeſſes as many goods and chattels as are ſufficient to diſcharge the debt. No man ſhall be obliged to perform more ſervice for his fee, than he is bound to by his tenure. No governor or conſtable of a caſtle ſhall oblige any knight to give money for caſtle-guard, if the knight be willing to perform the ſervice in perſon, or by another able-bodied man; and if the knight be in the field himſelf, by the king's command, he ſhall be exempted from all other ſervice of this nature. No vaſſal ſhall be allowed to ſell ſo much of his land as to incapacitate himſelf from performing his ſervice to his lord.

Theſe were the principal articles, calculated for the intereſt of the barons; and had the charter contained nothing farther, national happineſs and liberty had been very little promoted by it, as it would only have tended to increaſe the power and independence of an order of men, who were already too powerful, and whoſe yoke might have become more heavy on the people than even that of an abſolute monarch.—

But

But the barons, who alone drew and impoſed on the prince this memorable charter, were neceſſitated to inſert in it other clauſes of a more extenſive, and more beneficent nature: they could not expect the concurrence of the people, without comprehending, together with their own, the intereſts of inferior ranks of men; and all proviſions, which the barons, for their own ſake, were obliged to make, in order to inſure the free and equitable adminiſtration of juſtice, tended directly to the benefit of the whole community. The following were the principal clauſes of this nature:—

It was ordained, that all the privileges and immunities above-mentioned, granted to the barons againſt the king, ſhould be extended by the barons to their inferior vaſſals. The king bound himſelf not to grant any writ, empowering a baron to levy aids from his vaſſals, except in the three feudal caſes. One weight and one meaſure ſhall be eſtabliſhed throughout the kingdom. Merchants ſhall be allowed to tranſact all buſineſs, without being expoſed to any ar-

bitrary tolls and impoſitions; they, and all freemen, ſhall be allowed to go out of the kingdom and return to it at pleaſure; London, and all cities and burghs, ſhall preſerve their ancient liberties, immunities, and free cuſtoms; aids ſhall not be required of them but by the conſent of the great council; no towns, or individuals, ſhall be obliged to make or ſupport bridges, but by ancient cuſtom; the goods of every freeman ſhall be diſpoſed of according to his will; if he die inteſtate, his heirs ſhall ſucceed to them: no officer of the crown ſhall take any horſes, carts, or wood, without the conſent of the owner: the king's courts of juſtice ſhall be ſtationary, and ſhall no longer follow his perſon; they ſhall be open to every one, and juſtice ſhall no longer be ſold, refuſed, or delayed by them: circuits ſhall be regularly held every year; the inferior tribunals of juſtice, the county court, ſheriff's turn, and court-leet, ſhall meet at their appointed time and place; the ſheriffs ſhall be incapacitated to hold pleas of the crown, and ſhall not put any perſon upon his trial from rumour or ſuſpicion alone, but upon the evi-

dence

dence of lawful witneſſes: no freeman ſhall be taken, or impriſoned, or diſpoſſeſſed of his free tenement and liberties, or outlawed, or baniſhed, or any ways hurt or injured, unleſs by the legal judgment of his peers, or by the law of the land, (a clauſe which alone would have been ſufficient to ſtamp upon it the name of the Great Charter); all who ſuffered otherwiſe, in this or the two former reigns, ſhall be reſtored to their rights and poſſeſſions; every freeman ſhall be fined in proportion to his fault; and no fine ſhall be levied on him to his utter ruin; even a villain, or ruſtic, ſhall not by any fine be bereaved of his carts, ploughs. and implements of huſbandry: this was the only article calculated for the intereſts of this body of men, probably at that time the moſt numerous in the kingdom.

The *Great Charter*, and the *Charter of the Liberties of the Foreſt*, which laſt the barons had alſo forced from King John, are properly conſidered to be the foundation of Engliſh liberty. Theſe charters were confirmed in the ſubſequent reign of Henry III. with

with the addition of ſome conſiderable alterations in behalf of national liberty *; and they were, during many generations, the peculiar favourites of the Engliſh nation, and eſteemed the moſt ſacred rampart to Engliſh freedom and independence. As they ſecured the rights of all orders of men, they were anxiouſly defended by all, and became the baſis, in a manner, of the Engliſh monarchy, and a kind of original contract, which both limited the authority of the king, and inſured the conditional allegiance of his ſubjects. Though often violated, they were ſtill claimed by the nobility and people; and as no precedents were ſuppoſed valid that infringed them, they rather acquired than loſt authority, from the frequent attempts made againſt them in ſeveral ages, by regal and deſpotic power.—But the moſt important benefit which the Great Charter conferred upon the people,

* Hume, vol. 2, p. 147. Rap. vol. 1, p. 326.

The Great Charter made 9th Henry III. and confirmed by King Edward I. in the 25th year of his reign.—The Charter of Foreſts made at Weſtminſter, 10th February, anno 9th Henry III. and A. D. 1299. *Statutes at Large*, vol. 1, ch. 1, *et ſeq.*

was

was that of trial by jury, and muſt, while time endures, render the memory of thoſe patriotic barons who procured it, moſt dear to every Engliſhman, as well as to every man who comes under the protection of the Britiſh government.

This invaluable priviledge, however, had its origin long before the fatal battle of Haſtings, in which the brave Harrold II. loſt his life and crown, and his people their liberties*. Sir William Temple, ſpeaking of the antiquity of juries, ſays, "There were two fundamental laws of the Saxon or Engliſh kingdom; the trial by juries of twelve men, wherein conſiſted the chief ſafety of men's properties and lives; and the borough law, which was the greateſt ſecurity that had been invented by the wiſdom of our Saxon anceſtors, for the peace and order of the realm. The firſt, I know, is by ſome authors mentioned as having been introduced by the Norman conqueror, out of the laws of that country; but I think it evident to have been an inſtitution very ancient among

* Blackſtone's Comment. vol. 3, b. 3, c. 23. p. 349.

the

the Saxons, and to have been derived and obſerved during the whole ſucceſſion of the Engliſh kings, and even in the Daniſh reigns, without any interruption. Nor does there want ſome traces or appearance of it from the very inſtitutions of Odin, the firſt great leader of the Aſiatic Goths, or *Getæ*, into Europe, and the founder of that mighty kingdom round the Baltic Sea, from whence all the Gothic governments in theſe north-weſt parts of the world were derived, by the ſpreading conqueſts of thoſe northern races.

It is recorded, that upon the beginning of his expedition, he ordained a council of twelve men, who ſhould judge and decide all matters that came in queſtion: and there being then no other laws eſtabliſhed among thoſe vaſt numbers of rough people, going to ſeek out new conqueſts, and thereby ſeats to inhabit, it is probable theſe twelve men judged all caſes upon evidence or matter of fact, and then gave their ſentence, and appointed penalties according to what they eſteemed moſt agreeable to juſtice and equi-

ty,

ty, ſo as the twelve men were at firſt both jurors and judges: their judgments in cauſes, both real and criminal, being generally approved as juſt and equitable, grew into precedent to ſucceeding judges; and being received by general ſubmiſſion, introduced the cuſtom of certain ſentences being pronounced in certain cauſes, and certain puniſhments being uſually inflicted upon certain crimes. In proceſs of time, and multiplicity of buſineſs, the matter of fact continued to be tried by twelve men, but the adjudgment of the puniſhment, and the ſentence thereupon, came to be given by one or two, or more perſons choſen out of ſuch as were beſt verſed in the knowledge of what had been uſual in former judgments upon like caſes; and as the firſt part was left to the equals or neighbours of the perſons accuſed, (as moſt likely to do juſtice to one of their own rank or acquaintance) ſo the other was committed to perſons of learning or knowledge in the ancient cuſtoms, records, or traditions, of what had long paſſed in the courſes of juſtice among that nation: Thus we find it evident, that, in the Saxon

reigns in England, cauſes were adjudged by the alderman and biſhop of the ſeveral ſhires, with the aſſiſtance of twelve men of the ſame county, who are ſaid to have been judges or aſſiſtants to the two firſt, by ſuch as affirm or pretend this manner of trial to have been drawn by the Conqueror himſelf out of Normandy, who is thereby ſaid to have introduced in this, as well as ſome other forms, the Norman laws into the common law of England. It is true, that the ſame cuſtom or trial was uſed in Normandy before the conqueſt; and it is moſt probable, that neither the Engliſh received it from the Normans, nor theſe from the Engliſh; but that both nations, deriving their original from thoſe ancient Goths, agreed in ſeveral cuſtoms or inſtitutions deduced from their common anceſtors, which made this trial by juries continue uninterrupted in England, not only by the Normans, but by the Danes alſo, who were but another ſwarm of the great northern hive. It is true, the terms of jury and verdict were introduced by the Normans, with many others in the ſtile and practice of our laws, but the trials by twelve men,

men, with that eſſential circumſtance of their unanimous agreement, was not only uſed among the Saxons * and Normans, but is known to have been as ancient in Sweden †, as any records or traditions of that kingdom, which was the firſt ſeat of the Gothic dominions in the north-weſt parts of Europe, and it ſtill remains in ſome provinces of that country. However, King William cauſed this to be obſerved as the common law of the kingdom, and thereby gave great and univerſal ſatisfaction to the body of the people, both Engliſh and Normans ‡.

Alfred the Great, in his code of laws, adopted this excellent ſyſtem, which is juſtly extolled by all civilized nations, and we truſt it always will, as it ever has been, be looked

* Blackſtone's Comment. vol. 3. p. 349. vol. 4. p. 407.

† "It is a circumſtance well worthy an Engliſhman's obſervation," ſays Mr. Juſtice Blackſtone, "that in Sweden the trial by jury, that bulwark of northern liberty, which continued in its full vigour ſo lately as the middle of the laſt century, is now fallen into diſuſe; and that there, though the regal power is in no country ſo cloſely limited, yet the liberties of the commons are extinquiſhed, and the government is degenerated into a mere ariſtocracy." Vol. 3. 381.

‡ Introduction to the Hiſtory of England, p. 155, *et ſeq.*

upon as the glory of the Engliſh law. This pattern of royalty was ſenſible that the ſpirit of oppreſſion naturally grows upon men in authority; and therefore, he made it his ſtudy to confine that inclination within proper limits. He ordered, that in all criminal actions, twelve men, choſen for that purpoſe, ſhould determine concerning the fact, and the jndge give ſentence according to their verdict *. This tranſcendent bleſſing, enjoyed by the Engliſh at this moment, in its fulleſt extent, is undoubtedly the nobleſt and deareſt that ſubjects can poſſeſs, and is the beſt inheritance of every Engliſhman; who is out of all danger of being oppreſſed, how great and powerful ſoever his opponents may be; nor can the malice of a corrupt or partial judge injure him, provided the jury are true to their truſt, and will firmly maintain their unqueſtionable right to judge of the matter in iſſue before them.

The trial by jury, or the country, *per patriam*, is that trial by the peers of every

* Rap. vol. 1, p. 95. Hume, vol. 1, p. 93, dates the origin of juries from this period.

Engliſhman,

Engliſhman, which, as the grand bulwark of his liberties, is ſecured to him by the 46th article of the Great Charter; and is the moſt perfect plan for the ſettling of civil property that ever was deviſed by the ingenuity of man.

To enſure juſtice to the parties, juries muſt be compoſed of twelve free and lawful men, *liberos et legales homines de vicineto*, by whom the truth of the matter in controverſy ſhall be determined. Jurors muſt be ſuch men as are in no wiſe of kin to either party; who have not been arbitrators on either ſide; who have no intereſt in the cauſe; that have no action depending between any of them and the parties; that have taken no money for their verdict; and that none of whom has formerly been a juror in the ſame cauſe, or has been the party's maſter, ſervant, counſellor, ſteward, or attorney, or of the ſame ſociety or corporation with him, otherwiſe they are liable to be challenged and rejected as unfit perſons to ſit upon this dignified tribunal *.

* Blackſtone's Comment, vol. 3, book 3, c. 23, p. 363.

But

But if the utility and excellence of juries is thus admitted on all ſides in civil caſes, how much more ſo muſt it be valued in criminal proſecutions; ſince, in times of difficulty and danger, more is to be apprehended from the violence and partiality of judges appointed by the crown, in ſuits between the king and the ſubject, than in diſputes between one individual and another to adjuſt matters of private property. Our law has therefore placed this ſtrong and twofold barrier, of a preſentment and a trial by jury, between the liberties of the people and the prerogative of the crown. It was neceſſary for preſerving the admirable balance of our conſtitution, to veſt the executive power of the laws in the prince; and yet this power might be dangerous and deſtructive to that very conſtitution, if exerted without check or controul by juſtices of *oyer and terminer*, (*i. e.* to hear and determine) occaſionally named by the crown; who might then, as in France or Turkey, impriſon, diſpatch, or exile, any man who was obnoxious to the government, by an inſtant declaration that ſuch is their will and pleaſure. But the founders

founders of the Engliſh laws have, with excellent forecaſt, contrived, that no man ſhould be called to anſwer to the king for any capital crime, unleſs upon the preparatory accuſation of twelve or more of his fellow ſubjects, the grand jury; and that the truth of every accuſation. whether prefered in the ſhape of indictment, information, or appeal, ſhould afterwards be confirmed by the unanimous ſuffrage of twelve of his equals and neighbours, indifferently choſen, and ſuperior to all ſuſpicion: ſo that the liberties of England cannot but ſubſiſt, ſo long as this *rampart* remains ſacred and inviolate, not only from all open attacks, which none will be ſo hardy as to make, but alſo from all ſecret machinations which may be employed to ſap and undermine it; by introducing new and arbitrary methods of trial, by juſtices of the peace, commiſſioners of the revenue, and courts of conſcience. And however *convenient* theſe may appear at firſt, as doubtleſs all arbitrary powers, well executed, are the moſt *convenient*, yet, let it be remembered, that delays, and little inconveniencies in the forms

of

of juſtice, are the price that all free nations muſt pay for their liberty in more ſubſtantial matters; that theſe inroads upon this ſacred bulwark of the nation are fundamentally oppoſite to the ſpirit of our conſtitution; and that, though begun in trifles, the precedent may gradually increaſe and ſpread, to the utter diſuſe of juries in queſtions of the moſt momentous concern.

But, notwithſtanding the ſhield by which the ſubject is protected by the previous inveſtigation of the grand jury, whoſe knowledge ſo well fits them for the diſcharge of this important truſt, and whoſe independent circumſtances place them without the pale of corruption; yet the preſent practice of bringing accuſations before them, is expoſed to very ſerious objections. For inſtance, men, either hoodwinked by prejudice, or actuated by malice, and perhaps abetted by thoſe who are a diſgrace to the commiſſion of the peace, have been known to criminate the innocent upon groundleſs charges of felony, perjury, and breach of the peace. The iniquitous proſecutor, who perhaps only

only thought of this infernal device to extort money from a reſpectable character, is allowed to be examined before the grand jury, in ſupport of his accuſation, and to produce a train of ſuch witneſſes as he thinks will advantage him in that deſign; while the proſecuted is denied the privilege of ſending in his evidences to the grand jury, to confront his falſe accuſer, and develope the truth; and is frequently ignorant of the machinations that are hatching againſt him, till he receives intimation of it by a warrant, taking him into cuſtody, in virtue of an indictment found againſt him by the grand jury, upon *ex parte* proof. The end, indeed, as uſual, of ſuch deep-laid iniquity, upon a liberal inveſtigation in open court, before the common jury, is the honourable acquittal of the party accuſed; for, with truth and innocence on one ſide, and falſehood and chicane on the other, the event cannot be long hung in ſuſpence. The parties being brought face to face with each other, the learned judge and counſel, who, being maſters of the ſcience of croſs-examination, are enabled to prob the buſineſs to the bottom,

and to detect the wilful corruption of the profecutor, who, while he is exhibited there as a public monument of depravity, his ſoul is wrung with the tortures of the damned, which are increaſed by the indignation of the audience, and his own ſenſe of the approaching acquittal of the intended victim of his avarice or malignity. But is an honourable acquittal, how agreeable ſoever it may be to him, ſufficient to wipe away the ſtain which his character muſt ſuſtain by being brought into ſo ſhameful a predicament? or, is the world grown ſo good-natured as keep that in remembrance, and forbear to inſinuate that he had eſcaped juſtice by the benignity of the laws, or by the reluctance or friendſhip of the evidence?—I will venture to ſay, that there is no man of real feeling who would not rather ſurrender up the whole of his property, or end his days in voluntary exile, than have a bill found againſt him, (though innocent as the child unborn) by the grand jury, for felony, or perjury.—To obviate the poſſibility of ſuch a calamity happening to any man, ought to be among the firſt objects of parliamentary concern,

ſince

ſince *ex parte* examinations before the grand jury may involve in them evils of ſuch magnitude; evils which ſtrike at the root of the firſt principles of juſtice, and are therefore intolerable in a land of freedom.

The remedy for this diſeaſe, however, we apprehend is extremely ſimple.—It would, perhaps, be altogether removed, were it made a rule to give ſufficient notice to the party of the crime with which he is charged; that he ſhould be at liberty to produce evidence of exculpation before the Grand Jury; and that the names and places of abode of the witneſſes on each ſide ſhould be mutually exchanged within a convenient time previous to the inquiry taking place before them. Were this to be the caſe, as it ought to be, there would be a great many bills rejected, which otherwiſe may be found, and an innocent and valuable member of ſociety ſaved the vaſt expence and trouble of receiving his acquittal from the common jury. In God's name, what occaſion is there to put in practice ſo groſs an abſurdity, as to ſend a guiltleſs man to the common jury, to ſet the

envenomed tongue of ſlander at work, and to wound his own feelings, and thoſe of his family, beyond all cure, when he ought, according to the common rules of juſtice, to have had his acquittal pronounced in the firſt inſtance, by the grand jury?

SECTION VI.

THE obſequious parliament of Henry VII. in violation of trial by jury, and in the face of the *Great Charter*, erected the infamouſly celebrated court* of Star-Chamber, ſo called from its roof being ornamented with gilded ſtars; and, in the preamble to the ſtatute by which it was conſtituted†, threw out ſome inſinuations to the prejudice of this free and unparalleled method of trial.

* Star-Chamber erected by act of parliament.

† The origin of this court was derived from the moſt remote antiquity, though it is pretended that its power had been firſt carried to the greateſt height by Henry VII. In all times, however, it is confeſſed, it poſſeſſed authority, and at no time was its authority circumſcribed, or method of proceeding directed by any law or ſtatute. Hume's Hiſt. of England, vol. 6, p. 159, 160.

This

This court conſiſted of the Lord Chancellor for the time being, Treaſurer, Lord Privy Seal, calling a Biſhop and Lord of the King's Council, and the two Chief Juſtices of the King's Bench and Common Pleas; they had a power to puniſh by bill or information, maintainors or ſupporters of ſuits, rioters, perſons unlawfully aſſembling, *and other miſdemeanors*, as if the offenders had been convicted at law by a Jury*.

It was eaſily ſeen through by the nation, that this was a plan concerted by Henry to puniſh thoſe in a ſummary way, who might uſe too great freedom in their ſtrictures, with regard to his government and right to the crown. Theſe were points of which he was always extremely jealous, and kept pace only with that ſyſtem of extortion, and the moſt ſordid avarice, which he adopted and continued almoſt to the end of his reign.— In addition to theſe unprincely vices, in his nature, too, he was an unrelenting tyrant.— The young Earl of Warwick, after an im-

* Stat. 3 Henry VII. chap. 1.

priſonment

priſonment of fifteen years, fell a ſacrifice to his jealouſy, and was beheaded on Tower hill, at four-and-twenty years old. He was the laſt male-heir of the Houſe of York, which was, in truth, the crime that coſt him his life, the king chuſing rather to ſacrifice his reputation than be diſappointed of ſecuring the crown to himſelf and his heirs *. Edward IV. ſhewed a moſt deplorable inſtance to what extremity a tyrant prince will go, unleſs he is reſtrained by the laws, eſpecially where a diadem is at ſtake. The Prince of Wales, ſon of Henry VI. was murdered almoſt in his ſight †; and that of Henry his father, notwithſtanding his innocence, ſoon after followed. It is pretended, and was generally believed, that the ‡ Duke of Glouceſter killed him with his own hands. He purſued the Duke of Clarence, his own brother, to the ſcaffold, merely upon a preſumption of guilt; and all the favour he could obtain of him, was the manner of his

* Rapin, vol. 1, p. 683.

† Hume, vol. 3, p. 250.

‡ Ibid 251.

death.

death. He choſe to be ſuffocated in a butt of malmſey *. But that which marks his tyranny to have been extreme, was his cauſing, in the beginning of his reign, merely out of caprice, a tradeſman of London to be executed, for ſaying in jeſt, "he would make his ſon heir of the crown †," meaning, as he ſaid, his own houſe, which had that ſign. An action of James I. ſomewhat analagous, here alſo deſerves to be ſtamped with everlaſting reprobation. In his progreſs through England, to take poſſeſſion of the throne, he cauſed a cut-purſe to be hanged by his ſole warrant, without allowing the man the forms, much leſs the inveſtigation of a trial ‡. James, however, was given to underſtand, that a king of England had no ſuch power veſted in him, and that it was contrary to the liberties and franchiſes of the Engliſh nation, and might be productive of dangerous conſequences, thus to ſport with the lives of the ſubject. This advice had a proper operation on the mind of James, who

* Hume, 263.

† Rap. vol. 1, p. 595. Hume, vol. 3, p. 217.

‡ Rap. vol. 2, p. 159.

prudently

prudently refrained from ſimilar practiſes, during the reſt of his reign.

It were endleſs to enumerate all the oppreſſions and cruelties which the people of England have ſuffered from the tyranny of their kings. *Magna Charta*, and the indelible rights of the ſubject, they have treated literally with a ſovereign's contempt, as often as they croſſed their good will and pleaſure; nor was it till the weak, but peaceable reign of James I. that the people began with any degree of firmneſs to chalk out limits to regal authority. It was an eaſy matter for arbitrary monarchs, even ſo late as the reign of James II. to find fit inſtruments to countenance and enforce their oppreſſions; and if we examine the Engliſh hiſtory, ſhe ſhall find, that unprincipled judges and crown-lawyers, have ever been at command to perform the dirty work of the ſovereign. They have tortured the law, and contaminated the channels of juſtice, to give a colour to extortions, impriſonment, and the ſhedding of innocent blood, and no dangerous violations of the conſtitution have been atchieved,

atchieved, in which they have not ſtood foremoſt to ſupport, at leaſt, with their profeſſional weapons of ſophiſtry and technical quibble.

Take the following hiſtorical facts, in proof of theſe aſſertions:—

Mr. And. Horn, an eminent lawyer, who lived in the reign of Edw. I. in treating of the abuſes of the laws, thus expreſſes himſelf, "It is, ſays he, an abuſe, that juſtices and their officers, who kill people by their falſe judgments, be not deſtroyed, as other murderers, which King Alfred cauſed to be done, who cauſed 44 juſtices in one year to be hanged, as murderers, for their falſe judgments *." He therein mentions their names, and particularizes the crimes for which they were executed; moſt of them being, in one kind or other, infringements, violations, and encroachments upon the rights and privileges of juries. Among theſe, Mr. Horne tells us, "He hanged one Juſtice Cadwine, becauſe he judged one Hachway to death, without

* Mirror of Juſtices, p. 238, v. 108.

the conſent of all the jurors; and where, as he ſtood upon his jury of twelve men, and becauſe that three would have ſaved him againſt the nine, Cadwine removed the three, and put others upon the jury, upon whom Hachway put not himſelf *."

Edward I. alſo, upon complaints from all hands, that the judges ſuffered themſelves to be corrupted with bribes, puniſhed Sir Ralph de Hengham, chief juſtice of the king's-bench, by a fine of 7000 merks; Sir Adam Stratton, chief baron of the Exchequer, 3400 merks; Sir John Lovetot, juſtice of the lower bench, was fined 3000 merks; Sir William Bramton the like ſum; Sir Solomon Rocheſter, juſtice of aſſizes, 4000 merks; Sir Richard De Boyland, 4000 merks; Sir Thomas Sodington, 2000 merks; Sir Walter Hopton, 2000 merks: the four laſt were juſtices itinerant. Sir William De Saham, 3000 merks; Robert Littlebury, maſter of the rolls, 1000 merks; Roger Leiceſter, 1000 merks; Henry Bray, ef-

* Mirror of Juſtices, p. 239. v. 108.

cheater,

cheater, and judge for the jews, 1000 merks; and Adam De Stretton, a clerk of the court, was fined no leſs than 32,000 merks of new money, beſides jewels and ſilver plate*.

Sir Thomas Wayland, chief juſtice of the common pleas, was attainted of felony for taking bribes, and his lands and goods forfeited, as appears in the pleas of parliament, 18th of Edward I. and he was baniſhed the kingdom, as unworthy to live in that ſtate againſt which he had ſo much offended †.

Sir William Thorpe, chief-juſtice of the King's Bench, in Edw. III.'s time, having of five perſons received five ſeveral bribes, which in all amounted to 100l. was for this

* Rapin, vol. 1. p. 364, n. 6. Blackſtone's Comment. vol. 3, p. 408, n. w. Mr. Juſtice Blackſtone, here ſpeaking of the Chief-Juſtice Hengham, ſays, "And certainly his offence was nothing very attrocious or diſgraceful, for, though removed from the king's-bench, at this ſame time together with the reſt of the judges, we find him about twelve years afterwards made chief-juſtice of the common pleas."

† Rapin, vol. 1, 364. Blackſtone's Comment. vol. 3, 408. n. w.

alone adjudged to be hanged, and all his lands and goods forfeited. This judgment was given 24th Edward III.; the next year in parliament, 25th Edward III. it was debated in parliament, whether this judgment was legal; and *nemine contradicente*, it was declared to be juſt, and according to the law; and that the ſame judgment may be given in time to come, upon the like occaſion. This caſe is in point, that it is death for any judge wittingly to break his oath, or any part of it*."

In the reign of Richard II. Sir Robert Treſilian, chief-juſtice of the King's-Bench, was hanged at Tyburn for deciding that the king was above the law. He was like Judge Jefferies, a man of a blood-thirſty diſpoſition, which he manifeſted on the trial of a great number of thoſe unhappy wretches, who had, without reflection, been engaged in Wat Tyler's rebellion; and no leſs than fifteen hundred of them died by the hands

* See in State-Trials, Mr. St. John's ſpeech to the lords in the upper houſe of parliament, January 7, 1640, concerning the famous caſe of ſhip-money.

of

of the hangman, the cruel Treſilian ſhowing them no favour. The reſt of the judges, with the biſhop of Chicheſter, received the ſame ſentence, but had their lives ſpared, and were baniſhed to Ireland *.

Henry VII. found two lawyers, viz. Sir Richard Epſom, knight, and Edmond Dudley, Eſq; who were perfectly qualified to ſecond his rapacious and tyrannical inclinations, and to prey upon his defenceleſs people. The former of theſe engines of oppreſſion was of mean birth, of brutal manners, and of an unforgiving temper; the latter better born, better educated, and better bred; but both equally unjuſt, ſevere, and inflexible. For their iniquitous practices they were both tried, condemned, and executed on Tower-Hill, in the next reign, about the month of Auguſt, 1510 †.

Queen Elizabeth found means to procure certain judges and crown lawyers, who exerted themſelves with as much zeal and in-

* Rap. vol. 1, p. 465. Hume, vol. 3, p. 21.

† Ibid, p. 708. Hume, v. 3. p. 387, 412.

duſtry,

duſtry, as if their integrity and humanity had been engaged in the defence of ſpotleſs and perſecuted innocence, to murder a ſovereign independent princeſs, her moſt hated rival, the beautiful and celebrated Mary Queen of Scots, who had fled to her, upon a ſolemn promiſe of receiving her ſiſterly protection againſt the dangers with which ſhe was threatened by her own fanatical and rebellious ſubjects. This ſervice they performed with as little compunction, as that which a butcher feels at ſlaying a lamb, while the animal licks his hand. Deſirous, however, that the proceſs might be conducted againſt her in legal form, they ſpent a great deal of time in contention and heſitation about the ſtile and title by which the Scottiſh queen ſhould be charged in the indictment, whilſt they ſhewed the moſt perfect contempt of the very eſſentials of juſtice *.

The great Lord Chancellor Bacon was diſgraced for the moſt ſcandalous behaviour as a judge;—the receiving of bribes as a reward for betraying his conſcience, in the

* Robertſon's Hiſtory of Scotland, vol. 2, p. 129.

diſtribution

diſtribution of juſtice. This learned judge, over whoſe frailties humanity wiſhes to draw a veil, very narrowly eſcaped the ax in the reign of James I. He was declared unworthy of any longer preſiding as Chancellor, or of having a ſeat in the houſe of peers, though he had been lately created Baron of Verulam and Viſcount of St. Albans. He diſcovered the greateſt penitence, and confeſſed, in enumerating the bribes he had received, that one of his ſervants had taken a dozen of buttons, of the value of L. 50, in a cauſe depending before him. James granted him a penſion of L. 1800, upon which he lived in obſcurity at his chambers in Grey's Inn, and to the time of his death he maintained a ſevere ſtruggle againſt the preſſures of want, occaſioned by the calls upon him for debts which he had contracted in the ſunſhine of his proſperity. His too great indulgence to his ſervants, was the cauſe of his ruin; he connived at their takings, and they were profuſe and expenſive, and had at command whatever he was maſter of. His decrees in Chancery were gene-

rally

rally made with ſo much equity, that never was any one of them reverſed as unjuſt *.

In the reign of Charles I. the judges deſervedly incurred the hatred of the people for their extra-judicial opinion with reſpect to the celebrated affair of ſhip-money, as well as by numberleſs acts of oppreſſion againſt private perſons. Charles having formed a deſign to ſtretch his prerogative to the utmoſt pitch, ſent them a caſe for their opinion, containing ſuch ſtrong marks of what he deſired, that, with the utmoſt complaiſance imaginable, they made ſuch an anſwer to it, as will for ever remain an evidence of their weakneſs or corruption. It is thus worded, "May it pleaſe your moſt excellent Majeſty, we have, according to your majeſty's command, every man by himſelf, and all of us together, taken into ſerious conſideration the caſe and queſtion ſigned by your majeſty, and incloſed in your royal letter; and we are of opinion, that when the good and ſafety of the kingdom

* Ruſhworth, tom. 1, p. 22. Rap. vol. 2, p. 204—alſo 24. ſee n. 4, 5, 6, 7. Hume, v. 6. p. 109, 110.

in

in general is concerned, and the kingdom in danger, your Majeſty may, by writ under the great ſeal of England, command all your ſubjects of this your kingdom, at their charge, to provide and furniſh ſuch a number of ſhips with men, victuals, and munition, and for ſuch time as your Majeſty ſhall think fit, for the defence and ſafeguard of this kingdom from ſuch danger and peril; and that by law your Majeſty may compel the doing thereof in caſe of a refuſal, or refractiouſneſs:—and we are alſo of opinion, that in ſuch caſe your Majeſty is the ſole judge, both of the danger, and when and how the ſame is to be prevented and avoided." Signed. John Bramſton, John Finch, Humphrey Davenport, John Denham, Richard Hutton, William Jones, George Crooke, Thomas Trevor, George Vernon, Francis Crawely, Robert Berkley, Richard Weſton.

Sir John Brampton, Chief-Juſtice of the King's-Bench, Sir Humphrey Davenport, Lord Chief-Baron, and Juſtice Crawely, were obliged by the Lords to give bail in

L. 10,000 each, for their appearance touching their conduct in the affair of ſhip-money; and the other judges were alſo ſoon afterwards conſtrained to find ſurety for their appearance on the ſame account*. Berkley, a judge of the King's-Bench, was ſeized by order of the Houſe, even when ſitting in his tribunal†.

In the ſame reign, the Lord Keeper Finch was voted a traitor for abetting the arbitrary meaſures of the court: of all the king's miniſters, he was the moſt obnoxious to the people. He it was, as we ſhall have occaſion to ſhew hereafter, who, being ſpeaker in the king's third parliament, had left the chair, and refuſed to put the queſtion when ordered by the houſe. The extra-judicial opinion of the judges, in the caſe of the ſhip-money, had been procured by his intrigues, perſuaſions, and even menaces. In all unpopular and illegal meaſures, he was ever moſt active; and he was even believed to have declared publickly, that, while he

* Rap. vol. 2, p. 295, 355.

† Hume, vol. 6. p. 373.

was

was keeper, an order of council ſhould always with him be equivalent to a law. He tried to appeaſe the riſing diſpleaſure of the houſe by his ſubmiſſion, but finding that ineffectual, he fled into Holland*.

Sir William Scroggs, chief-juſtice of the King's Bench, in the reign of Charles II. was impeached for endeavouring to ſtifle the belief of the Popiſh-Plot, diſcouraging the king's evidences, diſmiſſing the grand jury that ſhould have preſented the Duke of York, and of unjuſtly proſecuting ſeveral writers and printers of pamphlets †. It was the ſenſe of the Houſe, "That the late order made in the King's-Bench, their warrants for ſeizing of books, and their diſmiſſing of grand juries, doth tend to the ſubverſion of the government, and hath been ever, and ought to be, adjudged high-treaſon ‡."

In this reign, "The Lord Chief-Juſtice Kelyng, about the year 1666, was queſtioned in parliament for overawing and putting

* Hume, vol. 6. p. 370, 371. Rap. vol. 2. p. 354, 355.

† Rap. vol. 2, p. 719.

‡ Pref. to Sir J. Forteſcue's book, *De Laud. legum Angliæ*, p. 12.

a reſtraint upon juries; and the Houſe came to ſeveral reſolutions on his caſe, and ordered him to be proſecuted: but by reaſon of the Houſe's being prorogued, and he himſelf not long after dying *in diſcontent*, the proceedings abated*."

James II. having obtained a victory over the Duke of Monmouth, at Sedgemoor near Bridgewater, on the 5th day of July, 1685, Feverſham, the general, in imitation of the principle of revenge with which his begotted and cruel maſter ſeems to have been actuated, immediately after the victory, hanged above twenty priſoners; and was proceeding in his executions in the ſame wanton career, when the Biſhop of Bath and Wells warned him, that theſe unhappy men were now by law entitled to a trial, and that their execution would be deemed a real murder. This remonſtrance, however, did not ſtop the ſavage nature of Colonel Kirke, who having long ſerved at Tangiers, had con-

* Preface to Sir John Forteſcue's book, *De Laudibus legum Angliæ*, p. 13.

tracted,

tracted, from his intercourſe with the Moors, an inhumanity unknown in a land of liberty. At his firſt entry into Bridgewater, he hanged nineteen priſoners without the leaſt enquiry into the merits of their cauſe. As if to make ſport with death, he ordered a certain number to be executed, while he and his company ſhould drink the king's health, or the queen's, or that of Chief-Juſtice Jefferies. Obſerving their feet to quiver in the agonies of death, he cried that he would give them muſic to their dancing, and he immediately commanded the drums to beat and the trumpets to ſound. By way of experiment, he ordered one man to be hung up three times, queſtioning him at each interval, whether he repented of his crime? But the man obſtinately aſſerting, that notwithſtanding the paſt, he ſtill would willingly engage in the ſame cauſe, Kirke ordered him to be hung in chains.

The violent Jefferies ſucceeded after ſome interval, and ſhewed the people that the rigours of law might equal, if not exceed, the ravages of military tyranny. This man, who

who wantoned in cruelty, had already given a ſpeceimen of his character in many trials, where he preſided, and he now ſet out with a ſavage joy, as to a full harveſt of death and deſtruction. He began at Dorcheſter, and thirty rebels being arraigned, he exhorted them, but in vain, to ſave him, by their free confeſſion, the trouble of trying them; and when twenty-nine were found guilty, he ordered them, as an additional puniſhment of their diſobedience, to be led to immediate execution. Moſt of the other priſoners, terrified with this example, pleaded guilty; and no leſs than two hundred and ninety-two received ſentence at Dorcheſter: of theſe eighty were executed. Exeter was the next ſtage of his cruelty: two hundred and forty-three were there tried, of whom a great number were condemned and executed.—He alſo opened his commiſſion at Taunton and Wells; and every where carried conſternation along with him. The juries were ſo ſtruck with his menaces, that they gave their verdict with precipitation, and many innocent perſons, it is ſaid, were involved with the guilty. And on the whole, beſides

thoſe who were butchered by the military commanders, two hundred and fifty-one are computed to have fallen by the hand of juſtice. The whole country was ſtrewed with the heads and limbs of traitors. Every village almoſt beheld the dead carcaſe of a wretched inhabitant; and all the rigours of juſtice, unabated by any appearance of clemency, were fully diſplayed to the people by the inhuman Jefferies.

Of all the executions, during this diſmal period, the moſt remarkable were thoſe of Mrs. Gaunt and Lady Liſle, who had been accuſed of harbouring traitors. Mrs. Gaunt was an Anabaptiſt, noted for her beneficence, which ſhe extended to perſons of all profeſſions and preſuaſions. One of the rebels, knowing her humane diſpoſition, had recourſe to her in his diſtreſs, and was concealed by her. Hearing of the proclamation, which offered an indemnity and reward to ſuch as diſcovered criminials, he betrayed his benefactreſs, and bore evidence againſt her. He received a pardon as a recompence for his

his treachery; ſhe was burned alive for her charity.

Lady Liſle was widow of one of the regicides, who had enjoyed great favour and authority under Cromwell, and who having fled, after the reſtoration, to Lauzanne in Switzerland, was there aſſaſſinated by three Iriſh ruffians, who hoped to make their fortunes by this piece of ſervice. His widow was now proſecuted for harbouring two rebels the day after the battle of Sedgemoor; and Jefferies puſhed on the trial with an unrelenting violence. In vain did the aged priſoner plead, that theſe criminals had been put into no proclamation; had been convicted by no verdict; nor could any man be denominated a traitor, till the ſentence of ſome legal court was paſſed upon him; that it appeared not by any proof, that ſhe was ſo much as acquainted with the guilt of the perſons, or had heard of their joining the rebellion of Monmouth; that though ſhe might be obnoxious on account of her family, it was well known that her heart was ever loyal, and that no perſon in England had

had ſhed more tears for that tragical event, in which her huſband had unfortunately borne too great a ſhare; and that the ſame principles which ſhe herſelf had ever embraced, ſhe had carefully inſtilled into her ſon, and had, at that very time, ſent him to fight againſt thoſe rebels, whom ſhe was now accuſed of harbouring. Though theſe arguments did not move Jefferies, they had influence on the jury: twice they ſeemed inclined to bring in a favourable verdict; they were as often ſent back with menaces and reproaches, and at laſt were conſtrained to give ſentence againſt the priſoner. Notwithſtanding all applications for pardon, the cruel ſentence was executed. The king ſaid, that he had given Jefferies a promiſe not to pardon her; an excuſe which could ſerve only to aggravate the blame againſt himſelf.

At the Revolution, in 1688, Jefferies found it convenient to decamp, when the unforgiving tyrant James was deſerted by the whole nation, abandoned by his own children, and obliged to abdicate his crown, to avoid the

ſtorm which portended his deſtruction from ſo univerſal a defection of the people. But Jefferies was diſcovered by the mob, in Wapping, diſguiſed in a ſeaman's habit. No mercy was ſhewn by them to a man ſo generally obnoxious to the nation, for his unheard of cruelties. They treated him with the utmoſt indignity, and almoſt put an end to his exiſtence, by the numerous blows which were beſtowed on him by every hand that could reach him. The Lord Mayor committed him to the Tower, upon his earneſt ſupplications, from whence the people wiſhed to ſee him brought forth, to ſuffer that puniſhment which his crimes ſo juſtly merited; but he ſoon after died there, of the bruiſes he had received. "Never man," ſays Rapin, "better deſerved a public puniſhment, as an attonement for all the miſchief done to this country, and all the blood ſpilt by his means *."

In 1725, the chancellor, Earl of Macclesfield, was impeached at the bar of the houſe

* Vol. 2, p. 750, 751. Hume, vol. 8, p. 232, 302.

of

of lords, for embezzling the eſtates and effects of many widows, orphans, and lunatics, and other high crimes and miſdemeanours. He was tried and convicted of fraudulent practices, and ſentenced to pay a fine of 30,000l. and ſtand committed until it ſhould he paid. He was committed to the Tower, where he remained ſix weeks, when, producing the money, he was diſcharged with this load of infamy upon his back *.

And here we conclude this catalogue of wicked and partial judges; though the Hiſtory of England abounds with many more examples of other judges and lawyers, who have been diſplaced, or otherwiſe puniſhed for violating the ſacred and eſtabliſhed rules of the conſtitution; and who have rendered themſelves unworthy of enjoying, by their ignoble practices, that diſtinguiſhed rank in ſociety to which they were elevated, upon the preſumption that they would, in compliance with their oath, in all things fulfil the duties of it with firmneſs and integrity.

* State Trials, vol. 6, p. 764.

Let us now proceed to put the reader in mind of what was acted and ſaid upon two recent occaſions, which excited, at the time, a great deal of public animadverſion; though the ſhocking depravity and circumſtances of the one caſe, and the preſuppoſed wickedneſs of the other, incline us religiouſly to believe, that the conduct of the judges, proceeded more from an unintentional impulſe of the mind, than from any premeditated deſign, wantonly to ſport with the lives of any of his Majeſty's ſubjects.

After the dreadful riots in 1780, the chief juſtice of the Common-Pleas was commiſſioned, with other judges, to try a number of thoſe deluded wretches, at St. Margaret's Hill in the Borough of Southwark, who had been concerned in the devaſtations of that time, in the capital and its environs.

The buſineſs of a judge who has any of the milk of human kindneſs in him, we have always underſtood to be that of tempering juſtice with mercy; but the oration of his Lordſhip, on opening of the commiſſion, diſcovered,

diſcovered, it is ſaid, that he came there with a mind very little diſpoſed to be of counſel for the priſoners. The opinions of men, reſpecting the "legal" propriety of it have been various. As a piece of oratory it has been admired; but its tendency to influence and direct the jury, and inflame their paſſions, againſt men, who ought all to have been ſuppoſed innocent, till found guilty by their country, has been generally ſpoken of in terms of indignation, by thoſe who are jealous of the rights of humanity. It was contended, *inter alia*, in oppoſition to the doctrines laid down in this ſpeech, "That it is one of the chief props of Engliſh liberty, that our laws do not admit of any conſtruction, or implication in any degree whatſoever, other than the common words of ſuch law or laws, as they are printed in the acts of parliament; that it is the declared right of Engliſhmen, that no conſtructive charge for high treaſon can, or ſhall be made—That his Lordſhip's applications, definitions, and conſtructions of treaſon, and his ideas reſpecting the ſtatute of George I. called the Riot-Act, were erroneous

neous and illegal, and tended to miſlead thoſe who were entruſted with the lives of the priſoners." But to remove the ſuſpicion of uncandid dealing by his Lordſhip, and that the impartial and conſtitutional reader may be enabled to draw his own concluſions, we here preſent him with the ſpeech itſelf, which we have at ſome pains reſcued from obſcurity *.

The

* "*Gentlemen of the Grand Jury,*

"If you are come here totally ſtrangers to the tranſactions which have paſſed in this neighbourhood, or if it were poſſible for any of you, who were not witneſſes of them, not to have heard of the devaſtations that have been committed, the remnants of the flames which have been lately blazing in ſo many parts of this metropolis, and which muſt have preſented themſelves to you, in your way to this place, will have ſufficiently declared the occaſion for which you are called together.

"His Majeſty's paternal care for the welfare of all his ſubjects, would not permit him to ſuffer offences ſo daring and ſo enormous to remain longer unexamined, than was legally neceſſary to convene a jury to enter upon the enquiry.

"The commiſſion under which you are aſſembled extends only to crimes of high-treaſon, or of felony, charged upon perſons now detained in the common goal of this county, or who ſhall be detained therein between the preſent time and the period at which the commiſſion ſhall expire. It was not thought proper to blend the common buſineſs of

an

The manner in which theſe unhappy men were tried, added freſh matter of complaint with

an aſſize, and the examination of thoſe offences to the commiſſion of which the frailty of human nature is but too liable, with crimes of ſo deep a guilt, and ſo much above the ordinary pitch of human wickedneſs as thoſe which will come under your conſideration.

" The general circumſtance under which thoſe crimes were committed, are of too great and ſhameful notoriety to require a minute deſcription; but for your information, Gentlemen, whoſe duty it will be to conſider the nature and quality of the charge imputed to ſuch offenders as will be brought before you, it will be neceſſary to conſider the ſeveral parts of thoſe charges, and to obſerve the connection of thoſe parts with the whole, always applying the circumſtances to the particular caſe under conſideration.

" I therefore think it an eſſential part of my duty, to lay before you, in one general view, a ſhort account of thoſe dangers from which *this kingdom* has been lately delivered. I uſe this expreſſion, becauſe it will clearly appear that the miſchief deviſed was—not the deſtruction of the lives or fortunes of individuals, or of any deſcription of men—no partial evil—but that the blow, which it has pleaſed Providence to avert, was aimed at the credit, the government, and the very being and conſtitution of this ſtate.

" The firſt remarkable circumſtance to be attended to, and which naturally demands our notice earlieſt of any, is a vaſt concourſe of perſons aſſembled in St. George's Fields on the 2d of June, called together by a public advertiſement (ſigned in the name of a perſon calling himſelf the Preſident of an Aſſociation), not only inviting many thouſands to attend,

but

with the public; though no man upon earth can offer any thing in their extenuation,

but appointing their enſign of diſtinction, and preſcribing the order and diſtribution of their march in different columns to the place of their deſtination. Charity induces one to believe, that, in ſuch a number, there were many went unwarily, and unconſcious of any evil intended; but credulity in the extreme can ſcarcely induce any man to doubt, that ſome there were who foreſaw, who intended, and who had practiſed to accompliſh the purpoſes which enſued.

" A very ſhort time diſcloſed, that one of the purpoſes which this multitude was collected to effectuate, was to overawe the Legiſlature, to influence their deliberations, and obtain the alteration of a law by force and numbers.

" A petition was to be preſented to the Houſe of Commons, for the repeal of an act, in which the petitioners had no ſpecial intereſt.

[His Lordſhip here laid down the right of the ſubject to petition. His doctrine upon this head was liberal and manly, his language clear, ſtrong, and emphatical.]

" To petition for the paſſing or repeal of any act," ſaid his Lordſhip, " is the undoubted inherent birth-right of every Britiſh ſubject; but under the name and colour of petitioning, to aſſume command, and to dictate to the Legiſlature, is the annihilation of all order and government. Fatal experience had ſhewn the miſchief of tumultuous petitioning, in the courſe of that conteſt in the reign of Charles the Firſt, which ended in the overthrow of the monarchy, and the deſtruction of the conſtitution; and one of the firſt laws after the reſtoration of legal government, was a ſtatute paſſed in the 13th of Charles the Second, chapter 5, enacting, that no petition

tion, who remembers, or who has read of the dreadful conflagrations and calamities that

petition to the King, or either Houſe of Parliament, for alteration of matters eſtabliſhed by law in Church or State, (unleſs the matter thereof be approved by three juſtices, or the Grand Jury of the county), ſhall be ſigned by more than twenty names, or delivered by more than ten perſons.

" In oppoſition to this law, the petition in queſtion was ſigned and delivered by many thouſands; and, in defiance of principles more ancient and more important than any poſitive regulations upon the ſubject of petitioning, the deſire of that petition was to be effected by the terror of the multitude that accompanied it through the ſtreets, claſſed, arranged, and diſtinguiſhed as directed by the advertiſement.

" How the leaders of that multitude demeaned themſelves, what was the conduct of the crowd to the Members of both Houſes of Parliament, it is not my intention to ſtate. I purpoſely avoid ſtating theſe things, becauſe at the ſame time that I point out the general complexion of the tranſaction, and relate general facts that are unfortunately too public and notorious, I chuſe to avoid every circumſtance that may have a direct and immediate relation to particular perſons. My purpoſe is to inform, not to prejudice or inflame. For this reaſon, I feel myſelf obliged to paſs over in ſilence all ſuch circumſtances as cannot, and as ought not to be treated of but in ſtrong language, and in more indignant terms than I chuſe at preſent to employ. Towards the evening, the two Houſes of Parliament were releaſed from the ſtate in which they had been held for ſeveral hours. The crowd ſeemed to diſperſe. Many of the perſons ſo aſſembled, it is not to be doubted, retired to their dwellings, but ſome more deſperate

that they occaſioned, which are ſo juſtly and pathetically deſcribed by this *omnis homo* and learned

and active remained, to convince the Legiſlature that the menaces with which they had invaded the ears of all who met them in the ſtreets were not fruitleſs; that they had not abandoned their purpoſe, but meant to carry it into full execution. When night fell, the houſes of two foreign miniſters, in amity with his Majeſty, were attacked, and their chapels plundered and ſet on fire.

"If ſuch an outrage had been committed on one of our public Miniſters, reſident in any of thoſe countries the moſt ſuperſtitious and bigotted to its eſtabliſhed religion, what reproach would it not have caſt upon that country? What indignation and abhorrence would it not have excited in our breaſts? Upon this tolerant and enlightened land has that reproach been brought!

"Upon the 3d of June there was a ſeeming quiet, *a very memorable circumſtance!* for ſudden tumults when they ſubſide are over. To revive a tumult, evinces ſomething of a ſettled influence, and ſomething ſo like deſign, that it is impoſſible for the moſt candid mind not to conceive that there lies at the bottom a preconcerted, ſettled plan of operation. Sunday, the next day, a day ſet apart by the laws of God and man as a day of reſt, and as a day not to be violated even by the labours of honeſt induſtry; in broad ſunſhine, buildings and private houſes in Moorfields were attacked and entered, and the furniture deliberately brought out and conſumed by bonefires: *and all this was done in the view of* PATIENT *Magiſtrates!*

"Some magiſtrates and ſome individuals had indeed in the beginning of the diſturbances exerted themſelves, and

ſeveral

learned lord; and indeed it is chiefly on account of *that manner*, we preſume to ſpeak

ſeveral who had been active in the demolition of the ambaſſadors houſes had been committed. On Monday the mob, who had not been reſiſted, but had proceeded with a ſucceſs which had increaſed their impetuoſity, thought it neceſſary to ſhew that the law ſhould not be exerciſed with impunity on delinquents like themſelves. It was the buſineſs of Monday to deſtroy the houſes of the Magiſtrates, and the other perſons who had been inſtrumental in apprehending them; but theſe outrages, great as they were, fell far ſhort of thoſe committed on the Tueſday and Wedneſday, which will ever remain a ſtain on our annals. Freſh inſults of the moſt daring and aggravated nature, were offered to Parliament; and every one, who was in London at the time, muſt remember, that it bore the appearance of a town taken by ſtorm; every quarter was alarmed; neither age, nor ſex, nor eminence of ſtation, nor ſanctity of character, nor even an humble though honeſt obſcurity, were any protection againſt the malevolent fury and deſtructive rage of the loweſt and worſt of men.

" But it was not againſt individuals alone that their operations were now directed. What has ever been in all ages, and in all countries, the laſt effort of the moſt deſperate conſpirators, was now their object. The jails were attacked, the felons releaſed—men whoſe lives their crimes had forfeited to the juſtice of the law, were ſet looſe to join their impious hands in the work.

" The city was fired in different parts. The flames were kindled in the houſes moſt likely to ſpread the conflagration to diſtant quarters, the diſtillers, and other places, where the inſtruments of trade upon the premiſes were ſure to afford the

ſpeak againſt it at this diſtance of time. The crown-lawyers, as if they imagined the culprits

largeſt quantity of combuſtible matter; and, in the midſt of this horror and confuſion, in order more effectually to prevent the extinguiſhing of the flames, an attempt to cut off the New River water, and an attack on the credit of the kingdom, by an attempt againſt the Bank of England, were made. Both theſe attempts were defeated, providentially defeated; but they were made under circumſtances which evince that they were intended to be effectual, and which increaſe the ſatisfaction and the gratitude to Providence that every man muſt feel, when he recollects the fortunate circumſtance of their having been deferred till that ſtage of the buſineſs.

"In four days, by the incredible activity of this band of furies parading the ſtreets of the metropolis with flaming torches, ſeventy-two private houſes and four public goals were deſtroyed, one of them the county goal, and that built in ſuch a manner as to juſtify the idea, that it was impregnable to an armed force. Religion, the ſacred name of Religion, and of that pureſt and moſt peaceable ſyſtem of Chriſtianity, the PROTESTANT CHURCH, was made the profane pretext for aſſaulting the government, trampling upon the laws of the country, and violating the firſt great precept of their duty to God and to their neighbour—the pretext only; for there is not, I am ſure, in Europe, a man ſo weak, ſo uncandid, or ſo unjuſt to the character of the reformed church, as to believe, that any religious motive could, by any perverſion of human reaſon, induce men to attack the magiſtrates, releaſe felons, deſtroy the ſource of public credit, and lay in aſhes the *capital of the* PROTESTANT FAITH!

"I have

prits who were to be tried before this tribunal were compoſed of an inferior ſort of clay

" I have now related to you the riſe and progreſs of that calamity from which, by the bleſſing of Providence upon his Majeſty's efforts for our preſervation, this kingdom hath been delivered—a ſituation unparalleled in the hiſtory of our country—no commotion ever having had a more deſperate and more fatal intention. It now remains to ſtate to you what parts of this ſubject will more directly call for your attention; and as it is evident, from what I have ſaid, that among the number of perſons whoſe caſes will be ſubmitted to your conſideration, there may be ſome who are accuſed with the guilt of high treaſon, it will be neceſſary and proper to ſtate the law with reſpect to thoſe ſpecies of treaſon under which ſome of the caſes may probably fall. There are two ſpecies of treaſon applicable. To imagine or compaſs the death of our ſovereign lord the king is high treaſon. To levy war againſt the king within the realm is alſo high treaſon.

" The firſt, that of compaſſing the death of the king, muſt be demonſtrated by ſome overt act, as the means to effect the purpoſe of the heart; the fact of levying war is an overt act of this ſpecies of treaſon, but it is alſo a diſtinct ſpecies of treaſon. And as the preſent occaſion calls more immediately for it, I muſt ſtate to you more fully, in what that treaſon may conſiſt.

" I am peculiarly happy, that I am enabled to ſtate the law on the ſubject, not from any reaſonings or deductions of my own, which are liable to error, and in which a change or inaccuracy of expreſſion might be productive of much miſchief, but from the firſt authority, from which my mouth only

clay from that of men of an elevated rank, who would have been treated with at leaſt a greater

only will be employed in pronouncing the law. I ſhall ſtate it to you in the words of that great, able, and learned judge, Mr. Juſtice Foſter, that true friend to the libertses of his country.

" Every inſurrection which in judgment of law is intended againſt the perſon of the king, be it to dethrone or impriſon him, or to oblige him to alter his meaſures of government, or to remove evil counſellors from about him—theſe riſings all amount to levying war within the ſtate, whether attended with the pomp and circumſtances of open war or not. And every conſpiracy to levy war for theſe purpoſes, though not treaſon within the clauſe of levying war, is yet an overt-act within the other clauſe of compaſſing the king's death.

" Inſurrections, in order to throw down *all* incloſures, to alter the eſtabliſhed law, or change religion, to inhance the price of *all* labour, or to open *all* priſons—all riſings in order to effect theſe innovations of a public and a general armed force, are, in conſtruction of law, high treaſon, within the clauſe of levying war. For though they are not levelled at the perſon of the king, they are againſt his royal majeſty; and beſides, they have a direct tendency to diſſolve all the bonds of ſociety, and to deſtroy all property and government too, by numbers and an armed force. Inſurrections likewiſe for redreſſing *national* grievances, or for the expulſion of foreigners in general, or indeed of any ſingle nation living here under the protection of the king, or for the reformation of real or imaginary evils *of a public nature, and in which the inſurgents have no ſpecial intereſt*—riſings to effect theſe ends by force and numbers, are, by conſtruction of law,

a greater ſemblance of law, violated, on this occaſion, the ordinary forms of juſtice. Many

law, within the clauſe of levying war, for they are levelled at the king's crown and royal dignity."

"In order fully to explain this, it will be only neceſſary to collect, repeat, and enforce the ſeveral paſſages in Mr. J. Foſter, relative to this ſubject. It may occur, that in ſeveral places mention is made of an armed force. In the very ſame chapter from which I have read an extract, the learned judge mentions two remarkable caſes in the latter end of the reign of Queen Ann.

"In the caſes of *Damaree* and *Purchaſe*, which are the laſt *printed* caſes which have come in judgment on the point of conſtructive levying war, there was nothing *given in evidence* of the uſual pageantry of war, no military weapons, no banners or drums, nor any regular conſultation previous to the riſing; and yet the want of theſe circumſtances weighed nothing with the court, though the priſoners' counſel inſiſted on that matter. The number of the inſurgents ſupplied the want of military weapons; and they were provided with axes, crows, and other tools of the like nature, proper for the miſchief they intended to effect."

"It is remarkable, that men who were the leaders, or ſet on as a part of that mob, likewiſe aſſembled under pretence of religion; and the falſe and wicked cry then was, that *the Church of England was in danger*, on account of the juſt and humane indulgence, which, from the happy period of the Revolution, had been granted to Diſſenters.

"Upon the trial of Damaree, the caſes referred to before were cited at the bar, and all the judges preſent were of opinion that the priſoner was guilty of the high treaſon charged

Many of them were huddled into the ſame indictment; at one time ſix, at another time

ged upon him in the indictment. For here was a riſing with an avowed intention to demoliſh all meeting-houſes in general; and this intent they carried into execution, as far as they were able. If the meeting-houſes of Proteſtant Diſſenters had been erected and ſupported in defiance of all law, a riſing in order to deſtroy ſuch houſes in general, would have fallen under the rule laid down in Keiling, with regard to the demoliſhing all bawdy-houſes. But ſince the meeting-houſes of Proteſtant Diſſenters are by the Toleration-Act taken under the protection of the law, the inſurrection in the preſent caſe was to be conſidered as a public declaration by the rabble againſt that act, and an attempt to render it ineffectual by numbers and open force."

"The objects of attack were the meeting-houſes of the Diſſenters; they were conſidered by the judges to have declared themſelves againſt the act by which the indulgencies were granted, and as attempting to render it ineffectual by numbers and open force, and on that ground Mr. Juſtice Foſter declares the judgment to be proper: all the judges concurred in it, at the time, it has been reſpected by poſterity, and its principle is neceſſary for the preſervation of the conſtitution, which we cannot but have felt the value of, in that moment when we have ſeen it threatened with, and in imminent danger of immediate diſſolution.

The calendar points out a number of priſoners who may be indicted, (as appears from their commitments) for burning and pulling down, or beginning to ſet fire to and pull down, the king's-bench priſon, the houſe of correction, and nine dwelling-houſes within the county; others may be charged

time nine; but, in order to make quick work with ſuch examplary knaves, moſt of whom

ged with breaking open the gaols, and releaſing the priſoners; others again may be charged with extorting money from individuals under terror of the mob, which is clear and incontrovertibly a robbery. As ſome of you, Gentlemen, are by your profeſſions, and all of you, undoubtedly, from your rank and ſtation, acquainted with the ordinary adminiſtration of criminal juſtice, it is unneceſſary for me to enlarge on the ſubject of theſe felonies.

"Burning a houſe, or out-houſe, being parcel of a dwelling-houſe, though not contiguous, nor under the ſame roof, was a felony at the common law, and by ſtatute the benefit of clergy was taken away.

"To ſet fire to any houſe, or out-houſe, though it is not burnt, is made a capital felony, by 9th Geo. I. chap. 22.—And by ſtatute 1, Geo. I. c. 5, called The Riot-Act, the offence of beginning to pull down buildings, by twelve, or more perſons, is made a capital felony. And having mentioned the riot-act, let me ſay a few words upon it.

"The two caſes which I have ſtated were very near this period; and the ſame pernicious principles which had been inſtilled into the minds of the loweſt orders of the people, were kept alive by the arts of faction.

"It is not leſs true than remarkable, that the ſame ſeditious ſpirit which had artfully been inſtilled into the people in the latter end of Queen Anne's time, had been continued to this time, (the acceſſion), and what a few years before had been miſcalled a *Proteſtant Mob*, was now a mob trained, excited, and actually employed to defeat the Proteſtant ſucceſſion.—In every mug-houſe, in every dark alley and lurking corner

whom were diſtreſſed objects, who had no money to fee counſel, on the 13th day of July,

of ſedition in this great town, artful and deſigning men were engaged in exciting this mob, to the deſtruction of the conſtitution: and therefore this act was framed to make the beginning of miſchief dangerous to the perpetrators of it. To begin to pull down any place of religious worſhip, certified and regiſtered by the Act of Toleration, or any dwelling-houſe or out-houſe, was made a capital felony. And any perſons, to the number of twelve or more, unlawfully, riotouſly, and tumultuouſly aſſembled, being commanded or required to diſperſe by the Magiſtrate, and continuing together for one hour after ſuch command, are declared guilty of felony, without benefit of clergy.

"But here I take this public opportunity of mentioning a fatal miſtake into which many perſons have fallen. It has been imagined, becauſe the law allows an hour for the diſperſion of a mob to whom the riot-act has been read by the magiſtrate, the better to ſupport the civil authority, that during that period of time the civil power and the magiſtracy are diſarmed, and the king's ſubjects, whoſe duty it is at all times to ſuppreſs riots, are to remain quiet and paſſive. No ſuch meaning was within the view of the Legiſlature; nor does the operation of the act warrant any ſuch effect. The civil magiſtrates are left in poſſeſſion of thoſe powers which the law had given them before; if the mob collectively, or a part of it, or any individual, within and before the expiration of that hour, attempts or begins to perpetrate an outrage amounting to felony, to pull down a houſe, or by any other act to violate the laws, it is the duty of all preſent, of whatever deſcription they may be, to endeavour to ſtop the

miſchief

July, *William Inbeſt, Richard Miller, Samuel Jordan, George Fletcher, Robert Lovell,*

miſchief, and to apprehend the offender. I mention this, rather for general information, than for the particular inſtruction of the gentlemen whom I have now the honour of addreſſing, becauſe the riot-act, I do believe, will not come immediately under your conſideration: Fame has not reported that it was any where, or at any time, read during the late diſturbances.

"In all caſes of burning or pulling down buildings, the being preſent, aiding, abetting, and encouraging the actual actors, though there be no act proved to be done by the party himſelf, is a capital felony. This is a doctrine ſolemnly delivered lately by the judges, and I believe will never be doubted.

"Taking goods or money againſt the will, under the terror of a mob, is felony.

"Of all theſe offences you are to enquire, and true preſentments make.

"The character and eſteem in which the gentlemen I have now the honour of addreſſing are held by their country, render any admonition from me on the ſubject of your duty ſuperfluous; in you it has long placed a confidence, nor will it, I am perſuaded, on this occaſion, have reaſon to repent it.—I have to remind you, that it is your duty only to enquire, whether the party accuſed is charged with ſuch probable circumſtances as to juſtify you in ſending him to another jury, who are appointed by law to hear the evidence on both ſides, and to ſay, whether the perſon charged be guilty or not of the crime imputed to him in the indictment; and if, upon ſuch trial, any advantage can be derived from the nicety or

vell, John Berry, James Palmer, Benjamin Rowland, John Quinton, Oliver Johnſon, and *Elizabeth Collins, ſpinſter,* were charged in one indictment for beginning to demoliſh the houſe of Lawrence Welch. The whole nation, as it were with one voice, cried out "ſhame!" againſt ſuch inconſiderate proceedings; the preſs ſtood forth champion of inſulted liberty, and proclaimed its indignation from every quarter of the kingdom. The judge felt the propriety of its reproach in the inmoſt receſſes of his habitation, and,

caution of the law, or any favourable circumſtances appear, it will be as much the inclination, as it is the duty of the learned and reverend judges with whom I have the honour of being in commiſſion, to ſtate ſuch circumſtances.

"And if the laws declare them guilty, the offenders may ſtill have recourſe to that fountain of mercy, the royal breaſt, where juſtice is always tempered with clemency.

"Such is the ineſtimable bleſſing of a government founded on law, that it extends its benefits to all alike, to the guilty and the innocent. To the latter the law is a protection and a ſafeguard; to the former it is not a protection, but it may be conſidered as a houſe of refuge: indeed there cannot be a greater proof of the excellence of that conſtitution, than by adminiſtering its benefits to all men indiſcriminately.

[The judges nominated with his Lordſhip in the commiſſion were, Sir Henry Gould, juſtice in the court of common-pleas; Sir James Eyre, baron of the exchequer, and Francis Buller, Eſq; juſtice in the court of king's-bench.]

to

to ſilence the public clamours, he was taught to adopt the conſtitutional method of trying *one by one*, the remaining few who had not undergone the examinations of juſtice.

At no one period in the Engliſh hiſtory, ſince the days of Jefferies, had more violent proceedings, it was alledged, ever been known. The infatuation of theſe delinquents, who ruſhed into this dreadful buſineſs without thought or plan *, required that they

* It is with the moſt profound veneration we regard every word which flows from the mouth of that humane and inflexibly upright man, the noble Earl of Mansfield. This wonderful judge, who ſeems to poſſeſs a greater ſhare of abilities than has almoſt ever fallen to the lot of humanity, was inclined to believe, from a chain of circumſtances, that theſe calamities did not altogether originate from the indigeſted plan of an unruly multitude, but proceeded from the directions of thoſe who, ſkulking from danger, like the midnight aſſaſſin, only employed meaner tools to put their infernal projects into execution. Whoſoever has heard of the burning and robbery of this venerable nobleman's houſe, and the jeopardy his ineſtimable life was thrown into, though no way inſtrumental in the toleration complained of, muſt ſhudder at the turpitude of ſuch an action, which can only be equalled by the crime of parricide. Eroſtratus, who fired the temple of Epheſus, was far leſs criminal than the ringleaders of this tragical event. To ſpeak by compariſon, the Ionian might have

they ſhould have been treated with that lenity which the law even allows to the worſt of criminals, a murderer. But one of the judges was accuſed of being dead to all the external feelings of compaſſion. He paſſed ſentence upon ſome of theſe wretched men without the ſmalleſt emotion; while they ſhewed, as they ſtood before him, the agonies which attend the ſenſe of a ſpeedy and violent diſſolution. Very different was the behaviour of that invaluable member of ſociety Mr. Juſtice Gould, who, adding the innocence of a new-born babe to the moderation and uprightneſs of a Judge, was troubled with a moiſture in his eyes, when his

have ſet up ſome claims to obtain mercy, whilſt the other fire-brands ought to have been hung in chains.

Yet, in this remorſeleſs manner, was this miracle of a man, in whom is concentered all that is truly great and praiſeworthy in human nature, treated by theſe diabolical miſcreants. But, let faction and calumny exhauſt their foul breath to the winds, his name and ſocial virtues will be revered by all good men, while time ſhall endure—and whatever frailties may be laid to his charge, (for who is free of them?) they muſt unanimouſly agree, in applying to him this paſſage of our immortal bard:—

" Take him for all in all,
" We ne'er ſhall look upon his like again."

duty

duty forced him to denounce the awful ſentence; and while he commiſerated their hapleſs condition, experienced within that diſtreſs of mind natural to thoſe whoſe hearts are not ſteeled againſt the finer ſenſations of humanity.

Againſt men of any rank or condition in life, I will venture to ſay, that this expeditious method of trial (ſuch as in caſes of avowed rebellion) would never have been thought of, or at leaſt put in practice; but let us tell every Engliſh judge, that the laws of England, and, what is more, THE LAW OF NATURE, knows of no diſtinction, difference, or reſpect of perſons. The meaneſt individual is equally entitled with the greateſt to a fair inveſtigation, and all the rights of juſtice; but to hurry over the trials of men, no matter what the meaſure of their crimes may be, when their lives are in the hazard, and to multiply fatherleſs children and widows in the *manner* we have ſhewn, ſavours too much of an inquiſitorial juriſdiction to be tamely ſuffered under the Engliſh government.

Mankind

Mankind are by nature equal, as ſprung from the ſame origin; therefore it would ſeem that no man ought to be conſidered better than another, unleſs he exceeds him in virtue, and in the exerciſe of the opportunities that education, ſuperior abilities, and wealth, have furniſhed him withal, to miniſter to the neceſſities of his fellow-creatures.

Puffendorff, in treating on this ſubject, ſays, " Human nature agrees equally to all perſons, and ſince no one can live a ſociable life with another, who does not own and reſpect him as a *man;* it follows, as a command of the law of nature, *that every man eſteem and treat another as one who is naturally his equal, or who is a man as well as he.* And here, as in all other things, may we juſtly admire the wiſe contrivance of nature, that whilſt ſhe diſtributes amongſt men th goods of the body and of the mind, by unequal parcels and meaſures, ſhe introduces this general *equality*, to form an agreeable harmony amongſt all the other varieties and diſproportions. For as in well-ordered commonwealths

monwealths one ſubject may exceed another in riches, or in honour, but all are equal ſharers in the common *liberty;* ſo under this regulation of nature, how much ſoever a man may ſurpaſs his neighbours as to bodily or intellectual endowments, he is ſtill obliged to pay all natural duties, as readily and as fully as he expects to receive them; nor do thoſe advantages give him the leaſt power or privilege to oppreſs his fellows. Nor, on the other ſide, does the bare unkindneſs of nature, or of fortune, ſet a man in a worſe condition than others, as to the enjoyment of common rights. But whatever one man requires or expects from others, the ſame may others, all circumſtances being alike, demand from him; and the ſame judgement one decrees againſt *another*, he is obliged in the like caſe to ſubmit to *himſelf*.

" This *equality* being admitted, there flows from it ſeveral precepts, the obſervation of which bears a very great force in the maintaining of peace and friendſhip amongſt men. And this, in the firſt place,

is moſt manifeſt, that he who would uſe the aſſiſtance of others in promoting his own advantage, ought as freely to be at their ſervice, when they want his help on the like occaſions. "One good turn requires another," is the common proverb. For he muſt certainly eſteem others unequal to himſelf, who conſtantly demands their aid, and as conſtantly denies his own. And whoever is of this inſolent temper, cannot but highly diſpleaſe and provoke thoſe about him, and ſoon give occaſion to a breach of the common peace *."

I do remember, in 1773, an eccentric man of the name of B—k—r, a barriſter at Jamaica, of ſome oratorical abilities, who uttered, *upon the ſpur of the occaſion*, in his pleadings, ſomething bordering on this illiberal hypotheſis, of the inequality of men. It aroſe in this manner. A Spaniard, prompted by a deſire to traffic with the inhabitants of Jamaica, had brought over with him from Cuba a large bag of dollars for that purpoſe.

* Law of Nature and Nations, book 3. c. 2. ſect. 1, 2, 4. p. 174, 175, 177.

He

He came to an anchor, in a ſmall ſloop, in a creek near the eſtate of T——r, one of the judges of the iſland, who being informed of it, ſet his wits to work how to ſeize the money; and no other expedient preſented itſelf to enable him to ſecure it, but by the murder of the man. In purſuance of this horrid purpoſe, he inveigled the Caſtilian to his plantation, from whence he was doomed never to return. This inhuman monſter commanded ſome of his negroes to tie him to a tree in the woods, where, being expoſed to the intenſe heat of a vertical ſun by day, to the ſtings of myriads of muſquettos, which fed continually upon his blood, the chilling cold and heavy dews of the night, and the pangs of hunger, he expired in the midſt of ſuch exquiſite and accumulated miſeries. The murderer was committed to Kingſton jail, upon which a modeſt application was made to the juſtices of the Surry aſſizes to admit him to bail.

It was on this memorable occaſion that I heard B—k—r exclaim, that "a common ſailor was not entitled, ſtanding in the ſame

predicament, to the ſame privilege as his client, who, as a judge and a man of family, ought to be admitted to bail." But, to the honour of *Colonel* French, who then preſided as *primus inter pares*, the application was denied with indignation. T——r ſoon afterwards died in priſon, and ſeaſonably ſaved his family and relations from that diſgrace which would have been entailed upon them by a public expiation of his crime.

Having expoſed the impropriety, if not illegality, of trying more than one perſon in the ſame indictment, it may not be uninſtructing to relate a caſe where the ſame practice was adopted elſewhere, but from a quite different motive, to acquit, not condemn.

About the year 1768, the Governor of Jamaica, upon a rumour of an inſurrection of the ſlaves in that iſland, thought proper for the general ſafety, to proclaim martial law, and to call out the militia. Guard was kept at an old court-houſe, ſituated at the bottom of King-ſtreet, where ſeveral companies

panies of the militia were aſſembled in arms. —Among them was a company called the Light Infantry, compoſed of ſprightly young men, moſt of whom were merchant's clerks. There lived at Kingſton one Naylor, a man of an abandoned character, who had long been a terror to the inhabitants, and who obtained his livelihood by peculation, and thoſe arts which are known, in theſe modern times, by the name of *Swindling*.

About ten at night a jew, of a reputation not much better than Naylor's, came and informed the guard, that he had broke out of Kingſton goal, where he alledged he had been lately confined for certain crimes againſt ſociety. A party of the light infantry, urged on by a deſire to ſeize and deliver up this man to juſtice, marched up to the Savannah, where he dwelt. All was ſilence and darkneſs there: they beſieged Naylor's houſe, and began their attack by throwing ſtones upon the ſhingles of it. Naylor was alarmed at the noiſe, and probably thinking the officers of juſtice were come to apprehend him, run out naked into his yard, which

which was ſurrounded by a pale-fence, exclaiming, "Damn you, who are ye? take care what ye are about, and fired a gun, as it was conjectured, *in terrorem;* but, with what intent he diſcharged it, alters not the complexion of this caſe. Inſtead of letting the man alone, and returning from whence they came, the report was no ſooner heard, than ſeveral ſhots were fired at him from different directions, one of which fatally took place in his body—and

"Cut *him* off—even in the bloſſom of *his* ſin,
"Unhouſell'd, unanointed, unannel'd;
"No reck'ning made, but ſent to *his* account,
"With all his imperfections on *his* head."

The bloody deed being done, the horrors of reflection ſeized the minds of the youthful perpetrators of it: they marched back to the court-houſe, in a ſtate of mind eaſier to be conceived than expreſſed, where an enquiry took place, under the conduct of Ferguſon, the commanding-officer for the time being, the particulars of which were never certainly known. The ſober and thinking part of the community were ſhocked at the wantonneſs of this action.

Michael

Michael D—d, the coroner, ſummoned a jury to enquire into the cauſe of his death: they were moſt of them young men, in the habits of friendſhip with the accuſed, who, having viewed the body, which lay where it had fallen, a lamentable ſpectacle, covered with blood and duſt, gave this extraordinary verdict:——"*Feloneouſly* ſhot, by perſons unknown, in their *own defence.*"—The word *feloneouſly* was ſtrongly objected to, and occaſioned much argument, chiefly through Chriſtopher, an attorney, one of the jurors, who had aſſiſted D—d in drawing up the depoſitions of the witneſſes.—However, they were at laſt reconciled to let it ſtand, upon the perſuaſion of the coroner, who declared it was a word of *courſe*, which he uſed on every occaſion where a *killing* took place, and had no criminal meaning, in this inſtance, annexed to it.

To keep up the appearance of juſtice, a public trial was reſolved to be held upon them; and, in the mean time, they were committed to the cuſtody of Hugh Polſon, the goaler of Kingſton, at whoſe houſe they indulged

indulged in that accommodation only due to men who had been the objects of a malicious proſecution. It was a happy circumſtance for the priſoners that there was among them one Philip Pinnock, a Creole, who being related to ſome of the principal families of the iſland, no means were left unemployed, on his account, in the preparations of a defence for the day of trial. A difficulty, however, occurred, from the obſtinacy of Richard Bowler, one of the party, who having perhaps leſs animal ſpirits, or rather having drank leſs wine at the court-houſe, diſcovered a great averſion at the madneſs of his fellows, was entirely paſſive in the affair, and afterwards openly cenſured their conduct. To get rid of this difficulty was the queſtion. Conſultations with lawyers were held upon it, and to cut off Bowler's evidence, had he intended to offer himſelf as a witneſs for the crown, he was ſhamefully charged in the ſame indictment with the reſt, as a principal. The trial came on at Kingſton, but in ſpite of every endeavour of Bowler, he could not prevail on any of the counſel at the bar, to take a brief from him,

to aſſert his innocence, (an evil which could only happen in ſuch a narrow community, and under ſuch influence), and no ſufficient proofs being produced to ſubſtantiate the charge of manſlaughter againſt any of them, which indeed was ſcarcely to be expected in behalf of ſuch a character, who had neither friends, relations, or well-wiſhers, to ſearch the affair to the bottom, or to oppoſe the management of this trial, they were eventually all honourably acquitted.

But to reſume the ſubject of the frailty of judges.—There is not, perhaps, one part of the conſtitution more eaſily aſſailed than in proſecutions at the inſtance of the crown, which ariſe in a great meaſure from the venality and miſapplication of the power and diſcretion of judges. Ermined robes, from the degrading examples we have already produced, may not always embrace the pureſt integrity and diſinteredneſs;—beſides, judges are but men, liable, like all other men, to miſtakes, and often to pernicious prejudices. Sir Robert Walpole, who ſeems to have been, as far as his ex-

perience extended, a good judge of the deplorable weakneſs of mortality, did not ſcruple, it is ſaid, to declare, that "Every man had his price." If this poſition is admitted, away with the mockery of intrinſic integrity. I cannot, however, ſubſcribe to this deteſtable doctrine, which aims to deſtroy the very foundations of morality, the trueſt criterion of real Chriſtianity. I ſhall ever think, that there are many men in the world whom no threats or temptations can influence to depart from the magnanimity of truth, and what they conſider to be the teſt of moral rectitude.

The allurements of title, or of promotion, held out by wicked miniſters, may happen to ſhake the integrity of ſome weak judges, and bias their judgments in theſe proſecutions; though, it muſt be confeſſed, in diſputes between *man and man*, it is ſeldom they can juſtly be charged in England with intentional debaſement. It is, therefore, in defence of the perſonal liberties of the ſubject, againſt the arbitrary deſigns of the crown, that all true Engliſhmen are moſt eſſentially

eſſentially intereſted; and it is their duty to guard thoſe liberties with a parental zeal.

Not that we fear even the injury which a feather might give, from the diſpoſitions of our preſent moſt gracious Sovereign, whoſe ſacred perſon and royal virtues are juſtly eſteemed by the whole nation: nevertheleſs, the miſdeeds of former kings happily remain ſtampt on the hiſtoric page, and will ever operate, from their fatal experience, as a check upon the actions of princes yet unborn.

In the wicked and ſanguinary reign of Charles II. his miniſters had flattered him with the vain idea of triumphing over the liberties of the nation, and indeed made rapid advances to attain that end. The Duke of Lauderdale was one of his moſt active engines. This nobleman, or rather ignoble man, ſeconded all the king's moſt arbitrary views, and was guilty of the crueleſt tyrrany againſt the country which gave him birth. What Charles ſaid reſpecting him as a miniſter, may naturally be applied in

commendation of a prerogative judge, who twiſts the law to ſerve the purpoſes of the court. "It is reported," ſays Mr. Hume*, "that Charles, after a full hearing of the debates concerning Scottiſh affairs, ſaid, 'I perceive that Lauderdale has been guilty of many bad things againſt the people of Scotland, but I cannot find that he has acted any thing contray to my intereſt."

And here I allude particularly to libels againſt the government, or what the miniſtry may conſtrue to be of that kind, with the aid of a prerogative judge.

Every crime conſiſts wholly in the intention, or act of the mind; but, in this caſe, the libellous criminality muſt appear to the jury on the face of the book or writing complained of, beyond all doubt, before they can conſcientiouſly venture to ſubject a man to the puniſhment that may be awarded by the judges upon a general verdict of Guilty. In moſt criminal proſecutions, it is almoſt impoſſible to ſeparate law from fact; and

* Hiſt. of England, vol. 8. p. 60.

conſe-

conſequently whether a writing be, or be not, a libel, never can be an abſtract legal queſtion for judges. The adminiſtration of criminal juſtice is happily placed, as above obſerved, in the hands of the people, and is the baſis of all freedom. Whenever it is loſt, liberty muſt fall along with it, becauſe the ſword of juſtice falls into the hands of men, who, however independent, have no common intereſt with the maſs of the people.

Our whole hiſtory is therefore chequered with the ſtruggles of our anceſtors, to maintain this important privilege, which, in caſes of libels, has been too often a ſhameful ſubject of controverſy. For the ancient government of this country, not being founded, like the modern, upon that knowledge which the people have of its excellence, but ſupported by ancient ſuperſtitions, and the laſh of power, it is no wonder that it ſaw the ſeeds of its deſtruction in the freedom of the preſs.

Printing,

Printing, therefore, upon the revival of letters, when the lights of philoſophy led to the detection of theſe preſcriptive uſurpations, was conſidered as a matter of ſtate, and ſubjected to the controul of licencers appointed by the crown; and though our anceſtors had ſtipulated by Magna Charta, that no freeman ſhould be judged but by his peers, the courts of Star-Chamber and High Commiſſion, conſiſting of privy-counſellors elected during pleaſure, oppoſed themſelves to that freedom of conſcience and civil opinion, which, even then, were laying the foundations of the Revolution. Whoever writ on the principles of Government was pilloried by the Star-Chamber; and whoever expoſed the errors of a falſe religion was perſecuted by the Commiſſion Court.—But no power can long ſuperſede the privileges of men in ſociety, when once the lights of ſcience have ariſen amongſt them. The prerogatives which former princes exercíſed with ſafety, and even with popularity, were not to be tolerated in the days of the firſt Charles; and our anceſtors inſiſted, that theſe arbitrary tribunals ſhould be aboliſhed,

liſhed, as infringements on trial by jury, and incompatible with the natural rights of ſociety.

There is no one ſubject of which an Engliſh jury can be more competent to exerciſe their judgment upon, than in the queſtion of written or printed libels, of what deſcription ſoever they may be; and their right to determine deciſively upon that queſtion, is not only ſupported by the impartiality and neceſſity of the meaſure, but accords with the ſpirit of our excellent conſtitution.

It is held, indeed, by ſome lawyers, that judges are appointed to decide what is the law;—juries to declare the fact, according to evidence; and both under the ſolemn engagement of an oath. By this is meant, that the jury are only to find the fact of the publication, and leave the law, *libel or no libel*, to the *diſcretion* of the judges. This doctrine, which was delivered in the caſe of the Dean of St. Aſaph, is directly contrary to the ſuffrage of that oracle of law, Mr. Littleton,

Littleton, who declares, "That if a jury will take upon them the knowledge of the law upon the matter, they may give their verdict generally as is put in their charge*". And it is ſo laid down by Judge Blackſtone, who ſays, "All gentlemen of fortune are in conſequence of their property, liable to be called upon to eſtabliſh the rights, to eſtimate the injuries, to weigh the accuſations, and ſometimes to diſpoſe of the lives of their fellow-ſubjects, by ſerving upon juries. In this ſituation, they have frequently a *right to decide*, and that upon their oaths, queſtions of nice importance, in the ſolution of which ſome legal ſkill is requiſite, eſpecially where the law and the fact, as it often happens, are intimately blended together. And the general incapacity, (according to his notion) even of our beſt juries, to do this with any tolerable propriety, has greatly debaſed their authority; and has unavoidably thrown more *power* into the hands of the judges, to direct, controul, and even reverſe their verdicts, than *perhaps the conſtitution intended*†".

* Coke upon Littleton, Section 368.

† Comment. vol. 1, p. 8.

But

But afterwards he ſpeaks out more ſtrongly, and ſays, that "they have an unqueſtionable right of determining upon all the circumſtances, and finding a general verdict, (though he adds this perhaps unneceſſary caveat) if they think proper ſo to hazard a breach of their oaths *," and not politely leave the matter of law to be determined by their honours the judges, who, even in this enlightened age, entertain a mortal averſion, like all men in, or connected with power, to the liberty of the preſs; and therefore, with reſpect to libels, are juſtly to be dreaded, as more likely to be influenced than twelve indifferent men of the vicinage; for, were juries to be menaced, or flattered by them to an acquieſcence in this dangerous doctrine, or tamely to ſuffer it to grow into precedent, what evils might not enſue from it in times to come, were ſuch infernal ſpirits again to appear in the world, as a Jefferies, a Treſilian, an Epſom, or a Dudley?

* Commentaries, vol. 4, b. 4. p. 354. See alſo vol. 3. p. 378.

However, let us ſuppoſe libels were to be written in hieroglyphics, or appeared as abſtruſe and difficult to jurymen, as Mr. Juſtice Blackſtone's *Table of Deſcents*, then, indeed, there would be ſome pretence to ſay, that juries could only determine upon the fact of publication, and ought to leave the decyphering of the law to the judges.—But happily, however, that can never be the caſe; ſince thoſe who apply their thoughts to elucidate the rights of the people, chuſe rather to dreſs them in plain Engliſh, ſuited to the underſtanding of the generality of men, than to practiſe an expedient which would render that purpoſe nugatory. In this view of the matter, I would aſk any juryman of tolerable hiſtorical information, What neceſſity there is to ſurrender the perſonal liberty and property of the ſubject committed to his care, and relinquiſh his undoubted legal right to any judges living, let their reputation for integrity be ever ſo immaculate? For, had our wiſe and wary anceſtors thought fit to depend ſo far upon the contingent honeſty of judges, they needed not to have been ſo zealous to

continue

continue the uſage of juries. From theſe premiſes, this deduction naturally arreſts the mind, that they ought invariably to obey the dictates of their own judgment and conſcience, *generally* to acquit, or find guilty, in theſe caſes, as the leaſt liable of the two to injury or perverſion; inaſmuch, were the propoſition, that juries are only competent to decide as to the fact of publication, it would put it in the power of diſhoneſt or prerogative judges, by ſtrained interpretations, rigorouſly to puniſh a man for that which is not only harmleſs, but uſeful to ſociety. It is therefore the criminality of a publication, upon which a jury are to give their verdict—not upon the prepoſterous idea of the fact of the publication, which perhaps the defendant, ſo far from denying, has openly avowed. By obſerving this rule, in caſes of libel, they will ſteer an innocent man clear of the danger attending a partial finding, maintain their ancient right to decide upon the whole queſtion, and leave no room for corrupt judges to put language, as clear as light, to the torture, to diſcover that guilt which touched

not the underſtanding, and was inviſible to the eyes of an impartial jury. On this topic Sir John Hawles, in his excellent treatiſe of *The Juryman's Adviſer* *, raiſes a ſuppoſition, that a man ſhould be indicted for paſſing a ſtatue with his hat on his head, to the great contempt of his Majeſty and his authority, and that the jury ſhould bring him in guilty of the fact, puts theſe words in the mouth of the barriſter, on their abandoning the priſoner to the diſcretion of the judges, in his dialogue with a juryman: "In the mean time, ſays he, What do you intend ſhould become of him? Muſt not he be kept in priſon till all the judges are at leiſure and willing to meet, and argue the buſineſs? Ought you not, and what reaſon can you give, why you ſhould not abſolutely acquit and diſcharge him? Nay, I do aver, you are bound, by your oaths, to do it, by ſaying with your mouths to the court, what your conſcience cannot but dictate to yourſelves, 'not guilty;' for, pray conſider, are you not ſworn, 'That you will well and

* Page 17.

truly

truly try, and true deliverance make?'—There is none of this ſtory, of matter of fact, diſtinguiſhed from law, in your oath; but you are 'well,' that is, *fully*, 'and truly,' that is, *impartially*, to try the priſoner.—So that if upon your conſciences, and the beſt of your underſtanding, by what is proved againſt him, you find he is guilty of that crime wherewith he ſtands charged, that is, deſerving death, or ſuch other puniſhment as the law inflicts upon an offence ſo denominated; then you are to ſay, he is guilty. But if you are not ſatisfied, that either the act he has committed was *treaſon, or other crime*, (though it be ever ſo often called ſo) or that the act itſelf, if it were ſo criminal, was not done, then what remains, but that you are to acquit him? For the end of juries is to preſerve men from oppreſſion, which may happen as well by impoſing, or ruining them for that as a crime, which indeed is none, or at leaſt not ſuch, or ſo great, as is pretended; as by charging them with the commiſſion of that, which, in truth, was not committed. And how do you well and truly try, and true deliverance make, when indeed

indeed you do but deliver him up to others to be condemned, for that which yourſelves do not believe to be any crime?"

—The jury having once pronounced his acquittal, the proſecution comes to a final determination. Even the court in which the trial is inſtituted, however they may be diſpleaſed with it, are cut off by law from ſetting aſide their verdict; nor has any other power in England a conſtitutional right to involve the priſoner in freſh difficulty, expence, and danger, by the revival of it. But the law, which ever leans to the ſide of mercy, ſtill having in its eye the prevention of injury to the innocent, wiſely guards againſt the poſſible miſtakes of juries, by authorizing the judges, where it appears to them that they have convicted the priſoner contrary to evidence, to interpoſe their authority by diſannulling it, and granting him the benefit of a new trial *.

* Wood's Inſt. p. 602, 648. Blackſtone's Commentaries, vol. 4. chap. 27. p. 355.

But

But the primary conſideration of a jury, in this caſe, ſhould be, whether that which is charged to be a libel be criminal or not? and, whether or no it was publiſhed with a criminal intention? And indeed upon theſe points the juryman has no room left for heſitation; becauſe it is agreed, both by ancient and modern judges, and lawyers of all intereſts and parties, that even if an innocent paper were admitted to be a libel, the publication would not be criminal, if the jury ſaw reaſon to believe that it was not publiſhed with a criminal intention; however, ſhould it appear that a paper containing ſeditious and libellous matter be publiſhed, the publiſher is *prima facie* guilty of ſedition, the bad intention being a legal inference from the act of publiſhing; yet this does not ſhut him out from giving a complete anſwer to the accuſation. For, as no man ought to be found guilty or puniſhed but for the commiſſion of real guilt, ſo he derives a right from the ſettled laws of his country, to call in the evidence of his neighbours as to his peaceable and orderly deportment, and to produce ſuch other evi-

dence

dence as ſhall be calculated to deſtroy that inference, by ſhewing he publiſhed it with an innocent mind. To ſupport theſe principles, which breathe ſo much of the ſpirit of candour and equity, ſo as not to carry with them the ſhadow of doubt or contradiction, we ſhall appeal to the words of Lord Mansfield, as reported by the late Sir James Burrow:

"There *may* be caſes where the fact proved as a publication may be *juſtified* or *excuſed* as lawful or innocent: for no fact, which is *not criminal*, in caſe the paper be a libel, can amount to a publication of which a defendant ought to be found guilty *."

There was an arbitrary practice which obtained heretofore, through the aſſiſtance of wicked judges, of fining, impriſoning, or otherwiſe puniſhing jurors, merely at the diſcretion of the court, for finding their verdict contrary to the direction of the judge.—This practice, however, was exploded by a learned author, one of the principal ſecretaries

* Burrow's Rep. vol. 5, p. 2666.

to

King Edward and Queen Elizabeth, who has theſe words: "But thoſe doings were even then, of many, accounted very violent, tyrannical, and contrary to the liberty and cuſtom of the realm of England *."

Another great authority, and one of the beſt men of his time, in his diſcuſſion of this ſubject, ſays, "It were the moſt unhappy caſe that could be to the judge, if he, at his peril, muſt take upon him the guilt or innocence of the priſoner; and if the judge's opinion muſt rule the matter of fact, the trial by jury would be uſeleſs †."

We have already mentioned, in page 123 and 124, that a puniſhment hung over the head of the Lord Chief-Juſtice Keyling, which was only anticipated by his death; however, not before the then parliament had branded his conduct with the following reſolutions, and as they confirm the rights of juries, and afford an excellent leſſon to

* Sir Thomas Smith's Commonw. l. 3. c. 1. Wood's Inſt. p. 648.

† Hale's P. C. vol. 2. p. 313.

all judges, are, on that account, well deſerving of being here inſerted;

" *Die Mercurii*, 11 *die Decembris*, 1667.

" That the proceedings of ſaid Chief Juſtice, in the caſes now reported, are innovations in the trial of men for their lives and liberties; and that he hath uſed an arbitrary and illegal power, which is of dangerous conſequence to the lives and liberties of the people of England, and tends to the introducing of an arbitrary government. That, in the place of judicature, the ſaid Lord Chief Juſtice hath undervalued, vilified, and contemned *Magna Charta*, the great preſerver of our lives, freedoms and property. That he be brought to trial, in order to condign puniſhment, in ſuch manner as the Houſe ſhall judge moſt fit and requiſite.—

" *Die veneris*, 13 *Decembris*, 1667.

" Reſolved, &c. That the precedents and practice of fining or impriſoning of jurors, (for giving their verdicts) is illegal *."

* Journal of the Houſe of Commons, vol 9. p. 35, 37.

Theſe

Theſe reſolutions, in defence of trial by jury, which were made, as it were, with the unanimous voice of the whole kingdom, and under the ſenſe of the flagrant illegality of ſuch proceedings in the judges, it is to be preſumed, would have acted as a perpetual remembrancer to them, to deſiſt from ſimilar practices in future. But, with judges dead to all ſenſe of honour, and ſelfiſhly officiating as the agents of a tyrannical prince, who was almoſt deaf to every thing but his own will and pleaſure, and prizing preſent emolument both to immediate and future infamy, what evils to ſociety might not be expected from men governed by ſuch views?

So little impreſſion did they make upon the minds of ſome of them acting under the auſpices of ſuch a maſter, that, in the ſpace of three years afterwards, they were guilty of the ſame daring attempt, the idea of which, however, was, by the united ſagacity of all the judges, effectually ſtrangled by their adjudication in the ſubſequent affair.

At the ſeſſions in London, September, 1670, Pen and Mead, two Quakers, were indicted for tumultuouſly aſſembling with a great many others, in Grace-Church-ſtreet, with *force and arms*, to diſturb the peace; and that the ſaid Pen did there preach to the ſaid Mead, and other people in the open ſtreet. The priſoners pleading not guilty, it was proved, that there was a meeting at the time ſtated in the indictment, in Grace-Church-ſtreet, of three hundred people, in the open ſtreet; that Mr. Pen was ſpeaking, or preaching to them; but what he ſaid, the witneſſes, who were officers and ſoldiers ſent to diſperſe them, could not hear. This was all the evidence; which, Sir John Howel, the then recorder, was pleaſed to ſum up to the jury in theſe words:—

"You have heard what the indictment is; it is for preaching to the people in the ſtreet, and drawing a tumultuous company after them, and Mr. Pen was ſpeaking. If they ſhould not be diſturbed, you ſee they will go on. There are three or four witneſſes that have proved this—that he did preach

preach there; that Mr. Mead did allow of it. After this, you have heard, by ſubſtantial witneſſes, what is ſaid againſt them:—Now we are upon the matter of fact, which you are to keep to—and obſerve as what hath been fully ſworn, at your peril."

The trial began at the Old Bailey, on Saturday. Never was any trial conducted with more rigour againſt an odious criminal, than was this, againſt thoſe gentlemen, who were known to their neighbours, and even to the court, to be of inoffenſive manners, mild diſpoſitions, and quite oppoſite to any action bordering on riot or diſturbance. Howbeit, rage and malice againſt them, inſtead of juſtice and urbanity, prevailed in the moſt violent degree, in the minds of their judges, which they publicly gave vent to in bittereſt invectives; but they had to deal with men, who, conſcious of having done no evil, were not to be confounded with abuſe or threatenings. As they were both men of ſenſe, and, as it appears, poſſeſſed of great preſence of mind, and uncommon parts, they exerted themſelves in their own defence with wonderful

ability

ability and courage; which, however, only helped to exaſperate the court more againſt them; and indeed, whoever reads the trial at large, will ſee, at once, that it was their ardent wiſh to have them found guilty, at all events. The Recorder of London, who ſat as one of their judges, ſhewed himſelf to be the abject tool of oppreſſion. He put this cruel queſtion to Mr. Mead.—"What ſay you, Mr. Mead, was you there?" Mr. Mead, without heſitation, made him this juſt, but ſtinging reply.

"It is a maxim in your own law, *Nemo tenetur accuſare ſeipſum*, which, if it be not true Latin, I am ſure it is true Engliſh, that no man is bound to accuſe himſelf. And why doſt thou offer to enſnare me with ſuch a queſtion? Doth not this ſhew thy malice? Is it like unto a judge, that ought to be of counſel for the priſoner at the bar?"

Mr. Pen was not behind him in the promptneſs and legality of his anſwers, which ſo put the court out of all temper, that the Lord Mayor, like a man who had made

made his eſcape out of St. Luke's, exclaimed, "Stop his mouth.—Jailor, bring fetters, and ſtake him to the ground."

At length the jury retired to conſider of their verdict, and after ſome time ſpent in debate, declared it, in theſe words, "Guilty of ſpeaking in Grace-Church-ſtreet." This verdict was like vinegar to the court, who told them, that they "had as good ſay nothing;" adding, "Was it not an unlawful aſſembly?"—"You mean, he was ſpeaking to a tumult of people there?" But the foreman ſaying, what he had delivered was all he had in commiſſion; and others of them affirming, that they allowed of no ſuch words as "an unlawful aſſembly," in their verdict, they were ſent back again, and then brought in a verdict in writing, ſubſcribed with all their hands, as follows: "We, the jurors hereafter named, do find William Pen to be guilty of ſpeaking, or preaching, to an aſſembly met together in Grace-Church-ſtreet, the 14th day of Auguſt, 1670; and William Mead not guilty of the ſaid indictment."

This

This the court reſented ſtill worſe; and as they perceived their will was thwarted by ſome of the jurors, who appeared leſs yielding than others of them, they fell tooth and nail upon Edward Buſhel, one of the jurors, thinking he was more zealous for the honour and ſafety of the priſoners than the reſt. Sir, ſaid the Recorder to him, "You are the cauſe of this diſturbance, and manifeſtly ſhew yourſelf an abettor of faction.—I ſhall ſet a mark upon you." And this violent Lord Mayor, ſtill farther to intimidate him, cried out to him, "Sir, you are an impudent fellow, and I will put a mark upon you."—But, as neither revilings nor menaces could induce them to comply with the humour of the court, at the expence of the priſoners, they were ſent back again to conſider of their verdict, and the court was adjourned till Sunday morning; but, as they ſtill inſiſted on the ſame verdict, the court adjourned till Monday morning, and then the jury brought in their verdict, generally, "Not Guilty," which was recorded and allowed of (though with the ſtrongeſt marks of reſentment in the court) amidſt the ſhouts

of

of the people. So much did the court appear to be led away by paſſion, that they immediately, on their acquittal, fined the jury forty merks a man, and to be impriſoned in Newgate till they paid it *. This unworthy treatment, both of the priſoners and the jury, begat a general diſlike againſt the court; nor was the glaring illegality of it forgot to be put into the account.

In the mean time, while they were in cuſtody in Newgate, Mr. Buſhel, equally anxious for the preſervation of his own perſonal liberty, as that of his fellow-ſubjects, brought his *habeas corpus* in the court of common pleas; on which the ſheriffs of London made this vague return;—

" That he was detained by virtue of an order of ſeſſions, whereby a fine of forty merks was ſet upon him, and eleven others, particularly named; and every of them being jurors ſworn to try the iſſues joined between the King and Pen and Mead, for cer-

* State Trials, vol. 2. p. 59, 62.

tain treſpaſſes, contempts, unlawful aſſemblies and tumults; and who then, and there, did acquit the ſaid Pen and Mead of the ſame, againſt the law of this kingdom, and againſt full and manifeſt evidence, and againſt the direction of the court, in matter of law, of, and upon the premiſes, openly in court to them given and declared; and that it was ordered they ſhould be impriſoned, till they ſeverally paid the ſaid fine, which he, the ſaid Buſhell, not having done, the ſame was the cauſe of his caption and detention."

The court debated the validity of it, and adjudged it, to their immortal honour, to be *wholly* inſufficient. Among many other cogent reaſons againſt it, the judges urged, that the words "againſt full and manifeſt evidence," was too general a clauſe. The evidence ſhould have been fully and particularly recited, elſe how ſhould the court know it was ſo full and evident? They had only the judgment of the ſeſſions for it, that it was ſo; but, ſaid they, "Our judgments ought to be governed upon our own inferences

rences and underſtandings, and not upon theirs."

"It is ſaid, that they acquitted the priſoners againſt full and manifeſt evidence, corruptly, and knowing the ſaid evidence to be full and manifeſt (for otherwiſe it could be no crime); whereas, it may ſeem full and manifeſt to the court, which does not appear ſo to the jury."

"That if (for inſtance) the judge, having heard the evidence given in, for he knows no other, ſhall tell the jury, upon this evidence, the law is for the plaintiff, or for the defendant, and they are under the pain of fine and impriſonment to find accordingly, then the jury ought of duty ſo to do;—every man ſees that the jury is but a troubleſome delay, great charge, and of no uſe in determining right and wrong, and therefore, the trials by them may be better aboliſhed than continued, which were a ſtrange new-found concluſion, after a trial ſo celebrated for many hundreds of years."

" That that part of the return, ſpecifying that the jury had acquitted them, contrary to the direction of the court, in matter of law, is illegal and unwarrantable; for, the judge's direction is hypothetical, upon ſuppoſition, and not poſitive, and upon coercion. But that this queſtion (ſays the candid reporter) may not hereafter revive, if poſſible, it is evident, by ſeveral reſolutions of *all* the judges—that where an attaint *

* A writ of attaint lies to enquire, whether a jury of twelve men gave a falſe or corrupt verdict; that ſo the judgment following thereupon may be reverſed; and this muſt be brought in the life-time of him for whom the verdict was given, and of two, at leaſt, of the jurors, who gave it.—The jury who are to try this falſe verdict muſt be twenty-four in number, and are called the Grand Jury, for the law allows not that the oath of one jury of twelve men ſhould be attainted or ſet aſide by an equal number. 23 Hen. VIII. c. 3. Wood's Inſt. p. 562, 563. But the practice of ſetting aſide verdicts upon motion, ſhewing them (by affidavit or from the judge's notes) to have been given contrary to evidence, or the direction of the court, for exceſſive damages, or where the judge himſelf has miſdirected the jury, and they have found an unjuſtifiable verdict, or for other extrinſic errors, and granting *new trials*, has ſo ſuperſeded the uſe of attaints, that no inſtance of an attaint appears in our books later than the ſixteenth century. Black. Comment. vol. 3, p. 387, 402, 404.

lies,

lies, the judge cannot fine the jury for going againſt their evidence or direction of the court, without other miſdemeanour *."

The jury being thus reſtored to their liberty, were therefore left to purſue their remedy at common law, againſt thoſe arbitrary judges, for the illegal impriſonment they had ſuffered; but, though the excellent example of conſtancy which they ſhewed on this occaſion will ever be the ſubject of admiration to all future ages, it is however plain, that had they been better adviſed, they might have brought in the priſoners, in whoſe conduct they could not perceive any criminality, *not guilty*, at firſt, and thereby ſaved themſelves the trouble and hardſhip of two night's reſtraint †.

* Sir John Vaughan's Reports, p. 144, 145.

† The jury who tried the Dean of St. Aſaph, for publiſhing a pamphlet, written on the principles of government, by Sir William Jones, ſeem not to have thought themſelves competent to give their judgment on the whole of the caſe, which was conveyed in the ſimpleſt language of their own vernacular tongue, otherwiſe they never would have truſted the judges, who are amazingly quick-ſighted in the diſcovery of a libel, with this verdict—"Guilty of publiſhing, but whether a libel or not the jury do not find."

Now

Now what judges, or ſycophants of power, will, in deſpite of theſe precedents, attempt to break down this ſacred rampart of the conſtitution, or fly in the face of the majeſty of the laws?

Juries being, as we have indubitably demonſtrated, appointed by the conſtitution, more immediately as our chief guardians, this moſt important advantage to the general ſafety of the people reſults from it, that though an abandoned adminiſtration, to ſupply their ruinous purpoſes, ſhould procure a corrupt majority in parliament to ſecond their endeavours to oppreſs us with taxes; while the conſtitution remains, in other reſpects, unimpaired, the continuance of juries, in their legal force, will ſecure our reputations, our lives, our perſonal liberties, and our limbs.

Hence every juryman ſhould come prepared to diſcharge his oath with an upright mind, free from malice, fear, hope or favour; and during the trial keep all his ſenſes awake, that ſo he may be enabled to do that

that juſtice to the priſoner which he would expect to be done to himſelf, were he ſtanding in the ſame predicament.

Faction, party-prejudices, and ſtrong rumours of guilt, often get abroad againſt a man, ſo as to reach the ears of the jury, who may be appointed to try him. This they ought to baniſh from their minds with all poſſible care; for nothing can hardly be more ſhocking to humanity, than the idea of ſuffering a man to be tried by a jury labouring under ſuch prejudices, againſt which even innocence itſelf ſtands in imminent danger. It is therefore from the evidence alone that they are to judge of his guilt or innocence; and where they ſee the leaſt cauſe to doubt of the criminality, they ought conſtantly to ſet the priſoner free.

It is become but too common a practice, in theſe days, among men of knowledge and ſubſtance, to bribe themſelves off from ſerving upon juries, not caring to give up a part of their time to the diſcharge of this important duty which they owe to the public.

lic. This ſhameful practice, the judges ought to examine into, and ſeverely puniſh thoſe in office who are the authors of it.—For, by the ſubſtitution of others of leſs decernment, they not only give them juſt reaſon to complain of groſs partiality, but prevent the king and country from being always honeſtly ſerved; and what is as bad, thoſe men who fly to theſe ſecret arts to get off, are not aware, that by the continuance of them, they may, in time, undermine this *precious* method of trial, which is abhorred in all deſpotic and ariſtocratical countries, but on which, however, the lives, liberties, and eſtates of all England depend, and therefore they cannot be too much diſcouraged in this land of freedom.

There are faults of omiſſion, as well as commiſſion. For example:—Were a man legally ſummoned to try ſuch a cauſe, if he ſhould ſhuffle himſelf out, and thereby perſons, perhaps leſs conſcientious, happen to be made uſe of, and ſo a villain eſcapes juſtice, or an innocent man is ruined, by a prepoſſeſſed or negligent verdict, can he think himſelf,

himſelf, in ſuch a caſe, wholly blameleſs? that man abets an evil, who prevents it not, when it is in his power. Nor can he eſcape the ſuſpicion of being a ſecret accomplice, who evidently declines the prevention of an atrocious crime.

Courage and reſolution to practiſe their duty with impartiality and integrity, free from bribery and baſe and ſervile fear, ſtand foremoſt among the qualifications of a good juryman. As to bribery, in this caſe, it is of ſo infamous a nature, that few men would be daring enough to attempt it; and fewer ſtill, if any, who would be captivated by its allurements; nay, who would not trample on the vile propoſer: and, with reſpect to fear, what has that juryman to fear from the diſpleaſure of the judges, or any other power, who gives his verdict with a clear conſcience? But, I am ſorry to ſay, I have ſometimes ſeen jurymen apparently inattentive to the fate of the priſoner, perhaps ſuffering their thoughts to wander upon their own affairs; while others, like ſo much inanima-

ted earth, could ſcarcely keep their eyes open during the trial.

Does not this point out the abſolute neceſſity of compelling the ſheriffs ſtrictly to do their duty in the ſummoning of jurors, and of preventing the dangerous conſequences that may hereafter enſue, from ſuffering men of independent circumſtances and known integrity to be ſtruck out of the pannel, merely for the ſake of favour or pecuniary reward, and impoſing ſuch miſchievous droſs in their ſtead? Or, is the negligence of our ſtate-ſurgeons ſo great, as to let this ulcer upon the conſtitution remain, without applying a radical cure to it?

It is the right of juries to judge when any matter is ſworn to; or, a deed read, whether it ſhall be believed or not; or whether it be true or falſe, in point of fact; as well as whether ſuch an act was done in ſuch or ſuch a manner, or to ſuch or ſuch an intent. For, the court is not to judge of theſe matters, which are evidence to prove or diſprove the thing in iſſue. And therefore,

fore, the witneſſes are always ordered to direct their ſpeech to the jury, they being the proper judges of their teſtimony.

In all pleas of the crown, or matters criminal, the priſoner is ſaid to put himſelf for trial upon his country, which is explained to be meant of the jury, by an officer of the court ſaying to them—" which country you are."

It is their right, where they ſee cauſe, to aſk, with modeſty and diſcretion, any neceſſary queſtions of the witneſſes, without begging leave of the court. For, if *aſking leave* was neceſſary, it would imply in the court a right when they liſt to deny it; and how then ſhall the jury know the truth? And ſince we ſee that counſel (who too often for their fees ſtrive only to baffle witneſſes, and *ſtifle* truth) take upon them always to interrogate the evidence; it is abſurd to think that the jurors ſhould not have the ſame privilege, who are upon their oaths, and proper judges of the matter.

An upright judge is of excellent uſe to a jury; for, by his learning and experience he may, by aſking pertinent queſtions, aſſiſt them to find out the truth among tedious, impertinent circumſtances and tautologies; and it is uſual with them to ſum up the heads of the evidence. But, the jurors are ſtill to conſider, whether it be done truly, fully, and impartially; becauſe, one man's memory may ſooner fail, than the memories of twelve men. The judge may likewiſe ſtate the law to them, *i. e.* deliver his opinion where the caſe is difficult, or where they deſire it. But ſince *ex facto jus oritur*, all matter of law ariſes out of matter of fact; ſo that, till the fact is ſettled, there is no room for law; therefore, all ſuch diſcourſes of a judge to a jury ought to be in this way; if you find the fact thus or thus, (ſtill leaving the jury at liberty to find as they ſee cauſe) then you are to find for the plaintiff; but if you find the fact thus, or thus, then you are to find for the defendant, or the like—Guilty, or Not Guilty, in caſes criminal.

It is ſafeſt for a jury to avoid all ſpecial or partial verdicts, eſpecially where they have reaſon to fear that the judges may be prejudiced. For, though judges are likely to be more *able* than jurymen, yet jurymen are likely to be more *honeſt* than judges, particularly in all caſes where the power of the prerogative, or the rights of the people are in diſpute. Our rights, therefore, both as individuals, and as a people, are more likely to be ſecure, while juries follow the reſult of their own opinion—for leſs danger will ariſe from the miſtakes of jurymen, than from the corruption of judges. Beſides, improper verdicts will but ſeldom occur; ſince juries will avail themſelves of the abilities and learning of the judges, by conſulting them upon all points of law; and thus, to the advantage of information, may add their own impartiality.

It is, however, frequent, that when ſome juries are withdrawn to conſider of their verdict, they forget the ſolemn oath which was adminiſtered to them, and with it the magnitude of the truſt committed to their charge,

charge, namely, the lives, liberties, and eſtates of their fellow-citizens, of which they are, in that ſituation, conſtitutionally appointed the judges; nor do they remember, that on their *fiat*, not only the fortune of the identical party, but, perhaps, the preſervation or ruin of many numerous families, ſolely depend.

The melancholy truth is, that ſometimes, without one ſerious thought, or reaſon offered, on either ſide of the queſtion, up ſtarts the foreman, or one or two, who, preſuming upon their having acquired experience as jurymen on former trials, raſhly deliver their opinions: and all the others, either in reſpect to them, or becauſe they had the largeſt eſtates, or to avoid the trouble of diſputing the point, or perhaps for ſome other reaſon equally wide of the purpoſe, or elſe deciding the matter by the plurality of votes, the buſineſs hath been in this manner determined, and men's lives, liberties, and properties, put, as it were, to the hap-hazard of croſs or pile.

Again,

Again, there is ſuch a *ſlaviſh fear* attending many jurors, that let but the court direct them to find *Guilty*, or *Not Guilty*, they will tamely give their verdict accordingly, though they ſee no reaſon why it ſhould chime in with the judge's direction; and indeed are admoniſhed by their own conſciences to declare againſt it. Many of them never ſeriouſly regard the chain and force of the evidence, or take the trouble to apply it to the particular caſe before them, but as the court ſums it up ſo they find, right or wrong; as if juries were appointed for no other end, than to comply with what the court would wiſh them to do.

A conduct ſo degrading is deſpicable to the laſt degree, and muſt be ſo conſidered by every juror who ſcorns to pollute his conſcience, or who would wiſh to maintain a good name in ſociety, even though the direction ſhould happen to be right; for as he knows it is not of his own knowledge, he preſumptuouſly acts in oppoſition to the dictates of his ſoul, and by ſo doing he hazards his neighbour's life, liberty, or property, on the opinion,

opinion, or perhaps paſſion of others, when he *knows* he has been ſworn *well and truly* to try the defendant himſelf.

Particular piques, and a humour of revenge againſt ſuch or ſuch parties, is often too apt to gain entrance into the breaſt of an unthinking man, where the door ſhould be always ſhut againſt them. For, if a man ſhould be but miſcalled by ſome odious name, or is ſaid to be of ſome party or faction, againſt which the current of popularity runs ſtrong, ſtraight they cry, hang him—find him guilty—no puniſhment can be too bad for ſuch a fellow. In ſuch a caſe, they think it a merit to ſtretch an evidence on the tenter-hooks, and ſtrain a point of law, either to ſerve the government, or to gratify an ill-grounded prepoſſeſſion againſt the man who may be ſo unhappy as to fall into their hands; as if injuſtice or oppreſſion could in any caſe be for the intereſt of government, when, in truth, nothing can more effectually tend to weaken or deſtroy it; or as if ſuch a hair-brained revenge was not abominated both by divine and human laws.

All

All theſe, and the like pernicious practices and inclinations, are to be execrated, and manfully reſiſted by every honeſt juryman;—and Heaven forbid that any of them ſhould be of ſo unworthy a diſpoſition, as to betray this otherwiſe *arx inexpugnabilis*, wherein the law hath placed him to maintain the juſt rights of his country, by treacherouſly or careleſsly ſurrendering it into the hands of oppreſſion, though varniſhed over by the captivating, but deceitful graces of *hired* eloquence, or any other ſtratagem of power.

Let him pay the utmoſt regard to the evidence offered on both ſides of the queſtion, that he may be enabled to learn the ſubſtantial juſtice of the caſe, the grand rule by which he ought to be guided. And if he ſhould ſuſpect that any ſubornation or colluſive means had been uſed with any of the witneſſes, or that they appeared to him to be influenced by malice, or any mercenary deſign, then it is his incumbent duty to mark, with great attention, the circumſtances or incoherencies of their tales, and

endeavour by apt queſtions to come at the truth, or dive into the latent villany.—To do this with propriety, ſo as to be ripe to give a clear judgment on the whole of the evidence, it is requiſite that he ſhould take down, in writing, himſelf, the heads of it, and not truſt altogether to his own memory, to the recollection of his fellows, or to that of the judge who tries the cauſe. That man deſerves not to ſit upon a jury, and merits public contempt, who reſts his opinion upon the preſumed care or capability of others; inaſmuch as by his negligence, or miſtaken confidence, he may be acceſſory to the ruin or murder of an innocent perſon, not to mention the perjury into which he thus headlong plunges himſelf.

The neceſſity of this caution is abundantly illuſtrated, not only by the induſtry of the judge himſelf, but by the counſel for the parties, who, though from the habits of their profeſſion in courts of juſtice, they acquire a ſtronger memory of things related there, than moſt other men, do not, however, value themſelves ſo much upon it, as

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to decline the aſſiſtance of the pen, in taking an account, at leaſt, of the material parts of the teſtimony of witneſſes.—Why, then, ſhould jurors, to whom is committed the care of this palladium of national liberty, negligently hurry over that which is ſo eſſentially neceſſary to the preſervation of it?

Be it, therefore, their firſt ſtudy to attend to theſe hints, and improve upon them by ſedulouſly conſulting the beſt hiſtory of their country; and, particularly to peruſe thoſe parts of Mr. Juſtice Blackſtone's Commentaries (which may well be reckoned as a legal hiſtory of England) that treat on this head, and the civil and criminal caſes with which it is inſeparably connected, that their minds and information may go hand in hand, and that they may the more eaſily acquire the ability to preſerve, unbroken to their poſterity, this venerable fabric, which their forefathers have, during ſo many ages, bravely defended againſt the innumerable attacks made upon it by miniſterial and ariſtocratical authority.

It is now time to mention, (tho' rather out of the order propoſed) ſome of the ſtrictures which were publicly made upon the conduct of the learned judge who tried Captain Donellan, at Warwick aſſizes, on the 30th of March, 1781, for the murder of Sir Theo. Boughton.

Upon this occaſion, popular clamours were every where ſounded againſt him, to an extreme degree; principally on the ſcore of his charge to the grand jury, in which, however, were included a conſiderable ſhare of acrimony and abuſe. In this charge, the learned judge deſcanted pretty much upon the horrid depravity of taking away the life of a man by poiſon; and true it is, that humanity revolts more againſt it than all other crimes; becauſe it cannot be foreſeen or guarded againſt by a manly reſiſtance.

But the people of England, ever jealous of their rights, and generouſly laying aſide all prejudice againſt the priſoner, were fired with indignation at the behaviour of the judge, in entering *too much* into the minutiæ of it, and repreſenting in too ſtrong colours

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to the grand jury, the circumſtances by which their judgments ought to be governed, with regard to the unhappy ſufferer; whereas, ſaid they, the charge of a judge to a grand jury ſhould always be *general*, and not *particular;* nor ought he to *appear* to know any thing of the merits of the cauſe, till the priſoner is fairly put on his trial before him.

The reſentment of the county of Warwick was wound up againſt the priſoner, antecedent to his trial, to a violent extreme, inſomuch ſo, as if they had foreſeen their own immediate ſafety and intereſt in his execution; and he was purſued to his grave with the ſame enthuſiaſtic rage which juſtly inſpired the Pariſians againſt the prieſt Regicide Ravaillac.

This unfortunate man had many proſecutors; but prejudice proved more fatal to him than the whole hoſt of them; and perhaps he might yet have lived, had the queſtion never been heard of till the hour of its legal inveſtigation; or had he been able to change the place of trial, as was done

done on the part of the Crown, in the proſecution of the Dean of St. Aſaph. But the tale of ſlander had circulated with its baleful celerity, and raſh prejudication, blindfolded by hearſay; and looſe *ex parte* proofs had before-hand decided on his guilt.

The oath of a judge, on his creation, ſaid the people, is to adminiſter juſtice indifferently to all men; and though, continued they, it was almoſt impoſſible that his Lordſhip could ſhut his ears againſt the bitter accuſations which were echoed againſt the priſoner from all quarters, yet, ſaid they, when the underſtandings of men appear to be carried away by the tide of rancour, with ſo much the more caution ought he to watch over the propenſities of his mind, and tear from it the rank weed of prejudice, leſt he may be ſuſpected to ſwim along with it, and forget that the law repoſes a confidence in his wiſdom and moderation, and *commands* him to eſpouſe the cauſe of the priſoner, *i. e.* to ſee that the proceedings againſt him are legal and ſtrictly regular, to prevent his falling a ſacrifice to the intemperate zeal of his

his proſecutors, aided by the rhetoric and falſe inferences of their counſel. But, ſaid they, was it diſpaſſionate in the judge to tell the grand jury, "that they were to collect the truth of the poiſoning from *circumſtances, and little collateral facts*, which, taken ſingly, afford no proof, yet, put together, do tally with and confirm each other, that they are as *ſtrong and convincing evidence*, as facts that appear in the broad face of day?"

Prejudice, they obſerved, is always ſtronger in a judge than a jury, becauſe contrariety of opinion and free diſcuſſion, among the latter, may lead to a more impartial enquiry, and incline them, eſpecially where the fact to be eſtabliſhed reſts on circumſtantial proofs, to throw the greateſt weight into the ſcale of mercy; ſo that where they perceive it, they ought to counteract it, by a due conſideration of every part of the evidence. Beſides, it was alledged, that his Lordſhip's charge ſavoured more of the opening-ſpeech of a proſecutor's counſel, than that delicate and general diſcourſe, which,

which, on ſuch a ſerious occaſion, ought to have flowed from his lips; nor did they ſcruple to declare, that it had a good deal of the air of prepoſſeſſion, and carried along with it the appearance of inſtructing the grand jury upon evidence not yet laid before them.

The priſoner ſtated in his defence, "that many falſe, malevolent, and cruel reports had been circulated againſt him in the public prints, and throughout the country;" but the learned judge, in his charge to the common jury, ſays, "Whether the fact is true or falſe, I cannot ſay, for I *really* do not know it of my *own* knowledge," which ſhews the injuſtice of imputing foreknowledge to him, and diſcovers the poſſibility of a matter becoming the common topic of converſation, all over the kingdom, and yet not reach the ears of a judge.—What amulet, then, can a judge carry about him, to protect him againſt the aſperſions of malignant men?

But whether there was any real foundation for theſe ſuggeſtions, we preſume not to determine,

termine, and therefore leave the reader to eſtimate their truth or falſehood by the charge itſelf, which we here ſubjoin for his peruſal *.

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* Mr. Juſtice Buller's charge to the Grand Jury:

" Gentlemen of the Jury,

" I am extremely pleaſed at your meeting me ſo early this ſeſſions, as by your timely attendance I hope I ſhall be able to get through the buſineſs of the county, in the courſe of the week; and I am the more ſatisfied at this circumſtance, as I perceive your calendar extremely loaded indeed, and that it actually contains a longer and heavier liſt of crimes, than I have found charged in the calendars of ſeven counties.

" Amongſt theſe, I find ſome in particular, which require no inconſiderable attention; and the firſt, of conſequence, which ſtands on the liſt, is ſuch as may depend on circumſtances only.—It is a crime of ſo peculiar a nature, that it is generally committed with the greateſt ſecrecy, and over which the offender always makes uſe of every art and cunning to throw a veil. It is your duty, gentlemen, to throw off this veil, and ſift the buſineſs to the bottom. *You are not to expect viſible proofs in a work of darkneſs.* You are to collect the truth from *circumſtances, and little collateral facts*, which, taken ſingly, afford no proof, yet, put together, do tally with and confirm each other, that *they are as ſtrong and convincing evidence, as facts that appear in the broad face of day.*

" In this caſe, gentlemen, you will have two objects to conſider: Firſt, Whether the deceaſed did die of *poiſon?* Secondly, Whether the perſon ſuſpected did aſſiſt in *adminiſtering*

The learned judge, in his charge to the common jury, did not forget to enforce the ſame

niſtering the poiſon?—With reſpect to the firſt of theſe conſiderations, you will, no doubt, *hear the ſentiments of thoſe who are ſkilled in the nature and effects of poiſon*, which is of various ſorts, and moſt ſubtile in its operation. From the *information* of ſuch perſons, you will be *able* to form an opinion upon the effects which *different poiſons* have on *different perſons;* and alſo of the *effects* the ſame *poiſons* have on perſons of *different habits and conſtitutions.* But in this enquiry, gentlemen, the opinions of ſuch perſons are not to controul; they are only to aſſiſt your determination; and, if you find it neceſſary, to enquire whether any, and *what means*, were uſed to *ſecrete any circumſtance* that might lead to more certain evidence. It will alſo be proper for you to enquire into the ſtate of health, in which the deceaſed had been previous to, and at the time of, this unfortunate affair; whether he was well, or indiſpoſed; and, if indiſpoſed, what medicines were preſcribed for him, and by whom.

" If you find he did get his death by poiſon, the next caſe is, to conſider, who gave him that poiſon; where poiſon is knowingly given, and death enſues, it is wilful murder; and if one is preſent when poiſon is given by another, he is not an acceſſary, but a principal.

" There are two ways, by which the law conſiders a perſon as preſent in ſuch caſes. There is an actual, and a *conſtructive* preſence. To be actually preſent, is to be in the room with, and within ſight of the perſon when the poiſon is adminiſtered. To be *conſtructively* preſent, is to be in the houſe, knowing and aſſenting to what is done.

" There are caſes, in which a man may be an hundred miles

ſame obſervation which he had made to the grand jury, namely, that "a preſumption, which

miles off, and give poiſon to another, to adminiſter to a third. Here the perſon who adminiſters the poiſon, if ignorant of the intention, is not guilty; but the perſon who gave it for that purpoſe, though at ſo great a diſtance, is guilty of murder.

"I will here mention one caſe, in which a perſon gave poiſon to another, to adminiſter to a third; but the perſon to whom he gave it for that purpoſe, knowing, as well as he did, that it was poiſon, then it was determined, that the perſon who ſo gave it was not a principal, but an acceſſary before the fact.

"I muſt alſo obſerve to you, that if an innocent medicine is changed for a noxious medicine, by ſubſtitution, he who changes it is guilty of murder, if the perſon die. If the indictment ſhould ſtate, that the deceaſed died by any particular *poiſon*, and it ſhould appear, upon enquiry, that he died of another ſort of *poiſon*, I am to inform you, that the *difference is immaterial*, with reſpect to the law; it being held ſufficient in ſuch caſe, that the deceaſed was poiſoned.

"It is alſo proper to remark to you, that the crime of murder, by means of poiſon, has ever been conſidered as the moſt odious of all crimes, as it is a ſpecies of murder, of a nature that implies peculiar premeditation; and in former times was held of ſo horrid a nature, that the perſons found guilty of it, were boiled to death in water or in lead, though at preſent the crime and puniſhment ſtand undiſtinguiſhed. But whilſt I am thus deſcribing the odious and horrid nature of this ſpecies of murder, it is neceſſary to caution you againſt applying your deteſtation of the crime itſelf, to the

which neceſſarily ariſes from circumſtances, is very often more convincing and more ſatisfactory, than any other kind of evidence, becauſe it is not within the reach and compaſs of human abilities to invent a train of circumſtances which ſhall be ſo connected together, as to amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all of thoſe circumſtances. But, if the circumſtances are ſuch, as, when laid together, bring convic-

perſon accuſed of it. [This obſervation came in very properly, it was ſaid, after the learned judge had knocked the nail on the head.] It is not your place to enquire into his immediate guilt or innocence—it is for you merely to enquire, whether there is ſufficient ground of ſuſpicion to put him on his trial *, and call on him to prove his innocence."

* See page 104 and 105, where the finding on *ex parte* proofs, by the grand jury, is animadverted upon. Since I writ the preceding ſheets, I have been well informed, that ſome grand juries, aware of the malice of many proſecutors, have made it a rule to permit the counſel or attorney of the party proſecuted, to appear before them, to confront and croſs-examine the accuſer and his witneſſes, and to explain to them the *real* motives of the proſecution; a practice, the wiſdom and juſtice of which is ſo apparent, that if followed in future by them, cannot fail to cut up and expoſe all fabricated attempts againſt the guiltleſs, and muſt be highly pleaſing to every man who reſpects his own honour and ſafety, or that of his neighbour.

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tion to your minds, it is then *fully equal*, if not more convincing than *poſitive* evidence."

But, whoever gives himſelf a moment's reflection, will perceive, that this poſition is inadmiſſible; and it would be the moſt dangerous thing in the world to a priſoner, were a jury to give way to ſuch an inhuman opinion. No circumſtantial evidence, we will venture to ſay, can poſſibly be ſo convincing as the poſitive teſtimony of *credible* witneſſes, though lawyers were to preach up the contrary to the day of judgment, and ſtrain all their ingenuity to eſtabliſh it.—For, what are circumſtances in evidence, but probable grounds for believing that which cannot be directly proved? conſequently, a reſort to that mode of conviction is, in itſelf, a proof of weakneſs. The ſtrongeſt body of circumſtantial evidence that can be adduced, muſt be indebted to our reaſoning powers for connection and inference; but, direct depoſition to the fact ſets all argument out of the queſtion. We can in this caſe only heſitate about the credibility of the witneſs;

witneſs; whereas, in that we may be deceived, both by perjury and falſe reaſoning.

Can it be held, that guilt ſhould be infered from circumſtances which will admit of a milder conſtruction, without doing violence to probability? The facts ſhould not be ſuch as will meaſure their effect by the credulity of the hearer;—there ſhould be no room left for difference of opinion; nothing which the confident would receive, and the ſcrupulous reject, but a compact connected chain of proofs and reaſoning, in which we can diſcover no break or incongruity, but which every judicious and humane mind might yield conviction to, and condemn his fellow-citizen to death upon, without danger of remorſe. Nothing can be more unjuſt, than to convict on circumſtances which are not cloſely interwoven and connected with each other; for, as each taken ſeparately are too weak to prove any thing, their ſtrength can only be derived from their mutual correſpondence.

It is a very natural rule, in judging of circumſtantial evidence, that not only particular facts ſhould correſpond with each other, but the whole taken together ſhould ſo compreſs and embrace the fact on all ſides, as to leave no room for different conſtructions; ſo that, when the ſolid pillars of direct proof are to be ſupplied by circumſtantial props, let the fact be ſurrounded with them, ſo as to leave no opening for the caprice of opinion to overturn it.

There is another rule which reaſon and experience ſufficiently recommend, which is, to be cautious of admitting circumſtances that do not appear at firſt as a ground of crimination, but rather grow out of the accuſation itſelf. Such are the expreſſions and behaviour of the party, after he knows himſelf charged or criminated upon the obſervation of thoſe who ſuſpect him; for appearances are to be taken in their fair obvious effect, as they would operate on an impartial obſerver, and not as they may be ſcrutinized by the ſearching eye of ſuſpicion, exploring arguments to ſupport

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an opinion already formed; and need I add, that as the ſhame of being ſuſpected, and embarraſſment attending it, will often induce a ſtile of behaviour ſimilar to the apparent conſciouſneſs of guilt, a man often will, even to the moſt impartial eye, exhibit ſigns of criminality in ſuch a ſituation, which yet ariſe from blameleſs and ingenuous feelings.

It may be ſaid, if all this nicety is to be obſerved in the reception of circumſtantial evidence, that mode of proving crimes will be extremely difficult; and ſo it ought to be, for againſt ſuch evidence the priſoner has more difficulty in defending himſelf, than any other. Where all the witneſſes ſpeak to the main fact charged in the indictment, and make their teſtimony verge to the ſame point, the line of defence is obvious; but, when a complexity of different facts are depoſed to, of which the priſoner has no intimation on his arraignment, and cannot poſſibly foreſee, as matter likely to be adduced on the trial, he cannot be prepared, with witneſſes to diſprove, or arguments to explain

explain them. Still worſe! this advantage will preſs chiefly, or altogether on the innocent; for the man who is really guilty, knowing the nature of the crime, with all its dependent circumſtances, will anticipate the proofs to come againſt him, and be either prepared to combat the facts by perjury, or explain them away by falſe ſuggeſtions. Surely, then, it is incumbent on the court to be moſt aſſiduous in the protection of innocence, by that penetrating caution, which is, in this kind of evidence, almoſt its only ſecurity.

The inexperienced and ſuperficial reaſoner, eagerly receives for true, what wears the face of probability, eſpecially when the circumſtances leading to conviction have any thing ſtriking in their nature, or means of detection; and when it requires a greater expanſion of judgment to reject, than to receive the inference that is preſſed upon him; but the man who reaſons juſtly, will not make ſo cheap a ſurrender of his conviction; he will pierce deeper than the mere ſurface of the evidence, will compare facts with

each other, and not give his aſſent till the inferences, on which he forms his opinion, are examined by the rules of his own reaſon. I fear, however, that men of this deſcription, as well as the former, if unuſed to judicial proceedings, are ſometimes too ready to meaſure the proofs which are to affect the life of a priſoner, by the ſame rules which they would apply to a queſtion abſtract, and unimportant; that is, when the whole evidence is properly digeſted and compared, on which ever ſide the ſcale of probability ſeems to preponderate, they will give their verdict. This is not the proper ſtandard of enquiry in criminal caſes; for mercy ſhould always throw a large weight upon the balance, and not deſiſt from interference, till probability has grown into apparent demonſtration; but where judgment is nearly on the poiſe, we ſhould never pronounce on the ſide of ſeverity.—Had ſuch humane principles always been adhered to, the ſword of the law had not ſo often bluſhed with the blood of innocence, in this country, as hiſtory informs us it has done.

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But why need I reſort to inſtances, when the recollection of every man will furniſh innumerable ones, within the ſphere of his own experience and recollection; not, perhaps, where the conſequences of raſh judgment have been fatal, but where falſe concluſions have been formed upon circumſtantial evidence, full as ſtriking and convincing as in any caſes upon record. Who was ever long converſant with human affairs, without being often witneſs to the moſt perplexing combination of incidents, which have led into opinions quite oppoſite to truth, and have been afterwards explained by the ſimpleſt cauſes imaginable? Who does not remember ſurmiſes and ſuſpicions he has himſelf entertained, from a variety of obſervations, accidentally preſenting themſelves together to his fancy, which have left him no doubt, for a time, but that his conjectures were as infallibly true, as the confirmation of his ſenſes could have made them; but the next hour, perhaps, has expoſed the fallacy of appearances, and without exploding one of the facts he built upon, the inference he drew from the whole has

turned out entirely chimerical? Who has not himſelf been often the innocent victim of ſuſpicion; and found circumſtantial proof ſo hard to repel, that he was obliged to labour under imputation till time had done him juſtice?

I would aſk, who is it that has had ſervants in his family, but at one time or other has been ſo blinded by circumſtances, as to receive the moſt injurious impreſſions againſt them; while ſome have gone even ſo far as to impeach their integrity, and continued in the belief of their guilt, till poſitive and unſuſpicious proof has demoliſhed his aereal fabric of circumſtances, and cleared up the character of a deeply injured man?—And therefore, from this way of reaſoning, it would ſeem, that "the collecting truth from circumſtances, and little collateral facts, though put together," do not "tally with and confirm each other," ſo as to amount to the ſafeſt proof, neither can they be ſo "ſtrong as facts that appear in the broad face of day." But it would be endleſs to urge arguments to this effect, and is quite ſuperfluous;

ſuperfluous; for that he who judges from appearances, how ſpecious ſoever, muſt often be deceived, is a truth as evident, from the light of reaſon, as experience.

It is a moſt agreeable reflection, however, that the practice of condemning and executing a man upon preſumptive evidence, has, for a long time, been wiſely exploded by the collective body of the nation, from the awful recollection that innocence has often fallen a victim to prejudices, chimeras, and ſuſpicions; and except in the caſe of Captain Donnellan *, a conviction founded altogether

* This ill-fated gentleman was convicted and executed wholly upon the evidence of circumſtances. Sir Theodoſius had been dead four days, before any ſuſpicion was entertained that he had been poiſoned; but the next day, September 4, 1780, various reports were ſpread round the country, charging Captain Donnellan with the murder of his brother-in-law, and which gradually encreaſed like an epidemic diſtemper. The body had then become putrid and offenſive, through the exceſſive heat of the weather. It was, therefore, put into a leaden coffin, and ſoldered up. Theſe reports coming to the ears of Sir William Wheeler, the guardian of the deceaſed, he requeſted that the body ſhould be opened, to ſatisfy the public; but an unaccountable chain of miſap-

altogether on circumſtances, has not happened in England, as we remember, during many

miſapprehenſions and croſs-purpoſes, which were imputed to the contrivance of the Captain, ſuſpended for ſome days this commendable deſire of the baronet. On the 11th day after his death, the Coroner's Inqueſt ſat upon the body, which was then in the higheſt ſtage of putrefaction. It was taken out of the family vault at Newbold; and when it had lain ſome time expoſed to the open air in Newbold churchyard, "Mr. Bucknill a ſurgeon put on a waggoner's frock dipped in vinegar, and tied a napkin, which had alſo been dipped in vinegar, round his mouth and noſtrils, and then opened the body in the preſence of at leaſt five hundred perſons."

On the trial, four medical gentlemen were called for the Crown, who declared it as their opinion, upon oath, that the deceaſed had died by poiſon. In the Caſe of Captain Donnellan, (p. 23.) publiſhed by Mr. Webb, one of his ſolicitors, it is ſtated, that Mr. Powel the apothecary (and one of the four) who attended the deceaſed, "could prove that, on the day of the body being opened, he, Mr. Powell, followed Lady Boughton and Mr. Donnellan out of Mr. Parker's houſe, as they were going to mount their horſes to return home, and that he then told them he was as glad as though any body had given him fifty pounds that Sir Theodoſius had been opened, *and that he was preſent*, for that nothing was more free from poiſon;" but it ſeems this gentleman was not croſs-examined at all.

Dr. Rattray, a phyſician, and another of the four medical witneſſes, was of opinion, even after he had heard the ſymptoms attending the death of the deceaſed deſcribed by his

many years; and we fervently truſt, that all jurymen will ſeriouſly conſider, and be extremely

his mother, that he was poiſoned with arſenick; yet this learned doctor, like the celebrated phyſician of antiquity, who miſtook a future for a fracture, changed his opinion, and was equally poſitive on the trial, as he had been before, that the deceaſed was deſtroyed by laurel water.——Shall therefore the life, and, what is of greater value, the good name of a fellow-citizen, be ſuffered to hang upon the ſlender twig of ſuch wavering opinions, and be liable, at any future period, to be cut off and blaſted in like manner?—Not that we mean to reflect in the leaſt upon the jury who convicted the priſoner; they, I am perſuaded, were governed in their verdict according to the beſt of their judgement; but, as we have already mentioned, circumſtances are ſo deceitful, that they ought always to be received with the utmoſt caution; nay, as jurors regard their own lives, they ought ever to miſtruſt them, and the rather, where thoſe circumſtances appear to be ſupported by that treacherous enemy to impartial inquiry—local prejudices.

A prodigious ſtreſs was laid upon the circumſtance of the priſoner's rincing the bottle ſuppoſed to contain the potion that put an end to the exiſtence of Sir Theodoſius; and that of his pulling Lady Boughton by the ſleeve while giving her teſtimony to the Coroner's Inqueſt. In anſwer to the firſt, Captain Donnellan ſays, "That upon coming into the room where Sir Theodoſius lay, he looked upon the ſad ſpectacle with horror and amazement, and when he breathed his laſt, he turned round to Lady Boughton, and aſked her where the bottle was which contained the phyſic ſhe had adminiſtered to her ſon? She pointed to a ſmall phial then on the

chimney-

tremely cautious in the reception of that ſort of indefinite proof; nor ſuffer their minds

chimney-piece, and ſaid, that was it; and that when ſhe poured out the medicine, ſhe left ſome of the ſediment at the bottom, which Sir Theodoſius obſerving, deſired her to put ſome of the medicine back again into the bottle, and ſhake it well, that he might have the whole, which ſhe ſaid ſhe did, and ſaid, when ſhe had got it all clean out, ſhe gave it him to drink, and afterwards gave him ſome cheeſe by his direction to keep the ſame upon his ſtomach. Mr. Donnellan then took the bottle from the chimney-piece, and not being able to diſcover at firſt ſight that there were any dregs or relicks in it, held the ſame up between himſelf and the window, in order to ſee more fully whether there were any dregs or not, and which he then found to be quite clean and dry, both within and without: but thinking it perhaps probable, that by putting a little water into the bottle, he might be able to get ſomething off the ſides, and by that means diſcover, by taſting it, what the medicine was which Sir Theodoſius had taken, he put about a tea-ſpoonful of water into the ſaid phial bottle, and after rincing it well, poured the ſame out into a ſmall white baſon then on the table, and dipping his finger in it, taſted the ſame ſeveral times, after which he told Lady Boughton, that he could not get ſufficient off the ſides to taſte exactly what the medicine was, but that what little he could taſte of it was, he thought, rather nauſeous. But Lady Boughton, in her firſt examination before the Coroner, ſwore that Mr. Donnellan poured out the contents of the bottle after rincing it, and informed her it had a diſagreeable taſte. In her ſecond examination before the coroner, ſhe ſwore he did not taſte it at all,

minds to be ſwayed by the *dictum* of a ſevere and argumentative Judge, who, under the profeſſions

all, but threw the ſame upon the floor, and in court ſhe ſwore, that he threw it into a baſon of dirty water," (p. 10, 11.) To the ſecond charge it is replied by Mr. Donnellan, "That when he waited upon the Coroner and Jury, the Coroner aſked him if he choſe to remain in the room while the witneſſes were examined, who replied, that he had no objection; accordingly he continued in the room during the examination of the witneſſes, and, in the courſe of Lady Boughton's examination, when ſhe ſpoke of her daughter's maid telling her that Mr. Donnellan was not at home, ſhe ſpoke "maid" ſo low, that Mr. Donnellan did not hear it, and thinking that ſhe ſaid "her daughter," he pulled her by the ſleeve, and told her ſhe had made a miſtake, for that her daughter, Mrs. Donnellan, was not up at the time; whereupon Lady Boughton recalled her words, and ſaid, "ſhe meant her daughter's maid." This was the whole Mr. Donnellan meant by pulling Lady Boughton's ſleeve; but the ſame hath been conſtrued by the malicious very invidiouſly againſt him." (p. 16.)

The circumſtance of his uſing a ſtill for other purpoſes than to diſtil lavender and roſe waters, was propagated about the country, and heightened the general prejudice againſt him. But it cannot afford any reaſonable ground of ſuſpicion; for the ſtill was an implement belonging to the houſe before he came there, and nothing could be more natural than, in a life of retirement and leiſure, to uſe it as an amuſement. It was ſaid, that he put lime and water into the ſtill to take off the ſmell of the poiſon he had diſtilled in it. In anſwer to this, he ſays, "He did that merely to de-

profeſſions of impartiality, not only loſes ſight of his duty, which in this caſe conſiſts in

ſtroy fleas; he likewiſe put lime and water into a bucket, and other things, as well as into the ſtill, and the reaſon of his uſing the ſtill at all upon that occaſion was, its being nearer at hand than any thing elſe. When he had put the lime and water into theſe veſſels, he placed the ſame under his child's bed and his own, and frequently wet the bedſteads with the water, as the women ſervants can teſtify. But if he really had any ſuch intention, he ſeems to have acted in oppoſition to the plaineſt rules of reaſon and caution. He puts the lime into the *pot or bottom* part *of the ſtill only;* whereas, to have more effectually taken off the ſmell of any particular poiſon, he ſhould have put it into the upper part of the ſtill as well as "the lower." (p. 21.)

Mr. John Hunter, the famous ſurgeon and anatomiſt, was called as an evidence for the priſoner; and certainly the higheſt credit is to be given to his teſtimony, not only on account of his ſuperior ſkill in his profeſſion, but from his being not otherwiſe known to the parties, than by reputation, and living remote from the ſcene of action, was leſs ſubject to be infected with local prejudices. I ſhall only ſtate a few of the queries put to him, with his anſwers to them, to ſhew that his ideas were very different from thoſe of the learned phyſical gentlemen who were examined for the proſecution.

Qu. "Are the ſymptoms that appeared after the medicine was given, ſuch as neceſſarily conclude that the perſon had been poiſoned?

Anſ. Certainly not.

Q. If

in a plain recital of the evidence on both ſides without comment, unleſs it is in behalf of

Q. If an apoplexy had come on, would not the ſymptoms have been nearly or ſomewhat ſimilar?

A. Very much the ſame.

Q. Have you ever known or heard of a young ſubject dying of an apoplectic or epileptic fit?

A. Certainly; but with regard to the apoplexy not ſo frequent; young ſubjects will perhaps die more frequently of epilepſies than old ones; children are dying every day from teething, which is a ſpecies of epilepſy ariſing from an irritation.

Q. Did you ever in your practice know an inſtance of laurel water being given to a human ſubject?

A. No, never.

Q. If you had been called upon to diſſect a body ſuſpected to have died of poiſon, ſhould you or not have thought it neceſſary to have purſued your ſearch through the guts?

A. Certainly.

Q. Do you not apprehend that you would have been more likely to receive information from thence than any other part of the frame?

A. That is the track of the poiſon, and I ſhould certainly have followed that track through.

Q. You have heard of the froth iſſuing from Sir Theodoſius's mouth, a minute or two before he died, is that peculiar to a man dying of poiſon, or is it not very common in many other complaints?

A. I fancy it is a general effect, of people dying in what you may call health, in an apoplexy, or epilepſy, in all ſud-

of the priſoner, but may be inclined to magnify innocent occurrences tenfold to his diſadvantage.

To

den deaths, where the perſon was a moment before that in perfect health.

Q. Have you ever had an opportunity of ſeeing ſuch appearances upon ſuch ſubjects?

A. Hundreds of times.

Q. Should you conſider yourſelf bound, by ſuch an appearance, to impute the death of the ſubject to poiſon?

A. No, certainly not; I ſhould rather ſuſpect an apoplexy, and I wiſh, in this caſe, the head had been opened to remove all doubts.

Q. If the head had been opened, do you apprehend all doubts would have been removed?

A. It would have been ſtill further removed, becauſe, although the body was putrid, ſo that one could not tell whether it was a recent inflammation, yet an apoplexy ariſes from an extravaſation of blood in the brain, which would have laid in a coagulum. I apprehend, although the body was putrid, that would have been much more viſible than the effect any poiſon could have had upon the ſtomach or inteſtines.

Q. Then, in your judgment upon the appearances the gentlemen have deſcribed, no inference can be drawn from thence, that Sir Theodoſius Boughton died of poiſon?

A. Certainly not, it does not give the leaſt ſuſpicion.

Court to Mr. Hunter. It is the general idea you are aſked about now, from the ſymptoms which appeared upon Sir Theodoſius Boughton, immediately after he took the draught

followed

To convict any man upon looſe unconnected circumſtances, though dreſſed up into the

followed by his death ſo very ſoon after, whether, upon that part of the caſe, you are of opinion that the draught was the occaſion of his death?

A. If I knew the draught was poiſon, I ſhould ſay, moſt probably, that the ſymptoms aroſe from that; but when I don't know that that draught was poiſon, when I conſider that a number of other things might occaſion his death, I cannot anſwer poſitively to it.

Court. You recollect the circumſtance that was mentioned, of a violent heaving in the ſtomach?

A. All that is the effect of the voluntary action being loſt, and nothing going on but the involuntary.

Q. Is apoplexy likely to attack a thin young man, who had been in a courſe of taking cooling medicines before?

A. Not ſo likely, ſurely, as another man; but I have in my account of diſſections two young women dying of apoplexies.

Court. Give me your opinion, in the beſt manner you can, one way or the other, whether upon the whole of the ſymptoms deſcribed, the death proceeded from that medicine, or any other cauſe?

A. I do not mean to equivocate; but when I tell the ſentiments of my own mind, what I feel at the time, I can give nothing deciſive."

The learned Judge, in his charge to the common jury, tells them, "If you are, ſays he, determining on the caſe upon the evidence of the gentlemen who are ſkilled in the faculty only, you have a very poſitive opinion of four or five gentlemen of the faculty on one ſide, that the deceaſed

did

the ſtrongeſt appearance of guilt by the petulant tongues of crown lawyers, offers the greateſt

did die of poiſon; and on the other ſide, what I really cannot call more than the doubt of another, that is Mr. Hunter. He ſays, that laurel water will produce the ſymptoms which are deſcribed; he ſays, an epilepſy or apoplexy will produce the ſame ſymptoms; but as to an apoplexy, it is not ſo common in its effects on ſo young and thin a man as Sir Theodoſius Boughton was." In queſtions of fact, indeed, this mode of conſidering the evidence might be very proper; for one man's teſtimony in thoſe points is, generally ſpeaking, intitled to as large a ſhare of credibility as another's; but, in matters of opinion, to be eſtimated by the depth of profeſſional knowſedge, ſurely the opinion of Mr. Hunter deſerved a ſuperior degree of credit, when weighed againſt the contracted ſkill of a few country phyſicians.

Mr. Wilmer, a ſurgeon of Coventry, appears to have given a very candid teſtimony on this occaſion; and happy would it have been for Capt. Donnellan, had the anatomiſts been totally ignorant of previous ſuſpicion, and required to diſcover the cauſe of death without any *data* but the appearances of the body on diſſection.

Q. to Mr. Wilmer. "You were there (at Lawford-hall) on the 4th and 9th of September, did you find any reluctance or unwillingneſs on the part of the priſoner to the body's being opened?

A. Not the leaſt in the world.

Q. Did he not ſeem rather deſirous of having it opened?

A. I believe it was at his own requeſt that a man was ſent for to unſolder the coffin.

Q. Was

greateſt violation to the feelings of humanity; and were that ſpecies of evidence to be

Q. Was any thing ſaid about your going to Sir William Wheeler the next day?

A. I heard a converſation between the priſoner and Dr. Rattray; I cannot, at this diſtance of time, ſpeak accurately to matters which appeared then to me trifling. I believe he aſked Dr. Rattray whether he ſhould ſee Sir William Wheeler?——"*I think Dr. Rattray ſaid, he believed he ſhould, and would give him an account of the buſineſs.*"

The ſudden death of the young baronet, after drinking the phyſic, ſeems to favour the opinion that he was poiſoned; but the "circumſtances and little collateral facts" that were adduced in evidence to prove Capt. Donnellan guilty of his murder, *do not appear, when put together,* "to tally with and confirm each other, ſo as to be as ſtrong and convincing evidence as facts that appear in the broad face of day." So far from it, that every impartial man, on reading the trial, and well conſidering of the evidence, with the priſoner's reaſons in anſwer to the ſuſpicions entertained againſt him, will perceive, that the certainty of his criminality becomes rather problematical. A gentleman has printed a Defence of the Poſthumous Reputation of Capt. Donnellan, which is annexed to the Solicitor's Caſe, as printed from the Brief. It is written with uncommon ability and ſtrength of reaſoning, and goes a great way to extinguiſh that load of ſuſpicion and prejudice which anticipated his fate; but it acquires additional force, when we have ſeen him ſolemnly atteſt his innocence, with his own hand, on the laſt day of his life; prepare himſelf for another world like a Chriſtian, fully conſcious that death was inevitable; appealing to that Deity who is

be made the ſtandard by which he ought to be judged, and their forced conſtructions received

is the avenger of falſehood, and knows all the ſecret motions of the human heart; ſcorning to eſcape from the hands of Juſtice, when that was the only alternative of ſafety, and meeting the approach of death with undaunted reſolution;—theſe circumſtances, I ſay, ſtagger all belief of his guilt, and renders it inſcrutable to mortal conception.

This remarkable trial unravelled many curious particulars.——The father dying of an apoplexy; ——— poiſoning his pack of hounds; and the unfortunate youth himſelf in the habit of poiſoning fiſh with arſenic, which he had bought by the pound for that purpoſe. But to crown the whole, the learned and amiable Judge makes up for the ſeverity of his inferences, as to *fatality and the pigeons*, by the humane and gentleman-like ſpeech he made to the priſoner, on paſſing ſentence upon him. "The manner and place, (ſays this candid Judge, and able man in the glorious ſcience of well-pleading *) in which this dark deed was tranſacted, and the perſon on whom it was committed, muſt enhance your guilt. It was committed under the maſk of friendſhip, and by the greateſt impoſition on an unfortunate mother, and a ſtill more unfortunate unſuſpecting young man. It was committed in a place where ſuſpicion, at the inſtant, muſt have ſlept; where you had acceſs, as a boſom-friend and brother; where you ſaw the riſing repreſentative of an ancient family preſide in affluence; but where your ambition proudly, but falſely, taught you to imagine that you might live in ſplendour and happineſs, if he whom you thought

* See Preface to Wood's Inſt. p. 3, 4.

your

received as the touchſtone of truth, the ſecurity of every member of ſociety would be in danger; but the abſurdity and cruelty of it is too glaring to be reliſhed by any mind enlightened with the leaſt glimmering of reaſon.

The modeſt, diffident, and humane Lord Chief Juſtice Hale inculcates this divine doctrine, which he more eſpecially recommends to the attention of juries; and well it deſerves to be treaſured up in their remembrance, as the nobleſt leſſon that ever was laid down to a juror, with reſpect to proſecutions affecting the life or liberty of the ſubject. "In ſome caſes, ſays he, preſumptive evidences go far to prove a perſon

your only obſtacle were removed. Probably the greatneſs of his fortune cauſed the greatneſs of your offence; and I am fully ſatisfied on the evidence given againſt you, that avarice was your motive, and hypocriſy ſerved you with the means. That the deed was done by you, which haſtened him to an untimely grave, has been fully proved to the ſatisfaction of myſelf and the jury; and I think it impoſſible to find a perſon of the meaneſt capacity, amongſt the numerous audience who ſtand around you, that can doubt of your guilt!" See the Trial of Capt. Donnellan.

guilty, though there be no expreſs proof of the fact to be committed by him; but then *it muſt be very warily preſſed;* for it is better that five guilty perſons eſcape unpuniſhed, than one innocent perſon die *."

" If a horſe be ſtolen from *A.* and the ſame day *B.* be found upon him, it is a ſtrong preſumption that *B.* ſtole him; yet I do remember, before a very learned and wary judge, in ſuch an inſtance *B.* was condemned and executed at Oxford aſſizes; and yet within two aſſizes after, *C.* being apprehended for another robbery and convicted, upon his judgment and execution, confeſſed that he was the man that ſtole the horſe, and being cloſely purſued, deſired *B.* a ſtranger, to walk his horſe for him while he turned aſide upon a neceſſary occaſion, and eſcaped;

* Hiſtoria placitorum Coronæ, Vol. II. p. 289.
Black. Comment. Vol. IV. p. 352.
The Lord Chief Juſtice Forteſcue ſtill urges this idea with greater force. " Indeed, ſays he, one would much rather that twenty guilty perſons ſhould eſcape the puniſhment of death, than that one innocent perſon ſhould be condemned and ſuffer *capitally*." De Laudibus Legum Angliæ. Chap. XXVII. p. 59.

and

and *B.* was apprehended with the horſe, and died innocently *."

"Another that happened in my remembrance in Staffordſhire, where *A.* was long miſſing, and, upon ſtrong preſumptions, *B.* was ſuppoſed to have murdered him, and to have conſumed him to aſhes in an oven, that he ſhould not be found; whereupon *B.* was indicted of murder, and convicted and executed; and within one year after, *A.* returned, being, indeed, ſent beyond ſea by *B.* againſt his will, and ſo, though *B.* juſtly deſerved death, yet he was really not guilty of the offence for which he ſuffered †."

"An uncle who had the bringing up of his neice, to whom he was heir at law, correcting her for ſome offence, ſhe was heard to ſay, *Good uncle, do not kill me,* after which time the child could not be found, whereupon the uncle was committed upon ſuſpicion of murder, and admoniſhed by the juſtices of aſſize, to find out the child by

* Ibid. 289. † Ibid. 290.

the next aſſizes, againſt which time he could not find her; but brought another child as like her in perſon and years as he could find, and appareled her like the true child; but on examination ſhe was found not to be the true child. Upon theſe preſumptions, (*which were conſidered to be as ſtrong as facts that appear in the broad face of day*) he was found guilty and executed; but the truth was, the child, being beaten, ran away, and was received by a ſtranger; and afterwards, when ſhe came of age to have her land, came and demanded it, and was directly proved to be the true child *. And, adds this merciful judge, whoſe whole life was one continued thread of ſincere and underſtanding juſtice, and who was not to be warped from his conſtant road of integrity, "I would never convict any perſon of murder or manſlaughter, unleſs the fact was proved to be done, or at leaſt the body found dead, for the ſake of theſe caſes." His ideas are equally divine, in treating of larcenies. The variety of circumſtances, he obſerves, in caſes of larceny,

* Ibid. 290. n. (*g*).

is

is ſo great, and the complications thereof ſo mingled, that it is impoſſible to preſcribe all the circumſtances evidencing a felonious intent, or the contrary; but the ſame muſt be left to the due attention and conſideration of the Judge and Jury, wherein the beſt rule is *in dubiis*, rather to incline to acquit than conviction *.

But let us here revert to that part of our narration, which we entered upon in the beginning of this ſection, with regard to the unconſtitutional meaſures of Henry VII.

The ſervices which this monarch rendered the people, were derived from his views of

* Ibid. Vol. I. p. 509. This excellent Judge was ſo exact in his duty, that ſo far from being ever impeached by the repreſentative body of the nation, that no one ſingle perſon was ever heard to complain of his conduct. This great man was ſo ſcrupulous and ſtrict, and had ſet ſuch rules to himſelf, that when a gentleman had ſent him a buck for his table, who had a trial at the aſſizes, he would not ſuffer the trial to go on, till he had paid him for his buck; upon which the gentleman withdrew his record, or cauſe. At Saliſbury, the Dean and Chapter having, according to cuſtom, preſented him with ſix ſugar loaves in his circuit, he made his ſervants pay for the ſugar before he would try their cauſe. Selden's Notes upon De Laudibus Legum Angliæ, p. 119.

private

private gain, rather than the motives of public ſpirit *; and where he deviated from intereſted regards, it was unknown to himſelf, and ever from the malignant prejudices of faction, or the mean projects of avarice, ſtill leſs from the benign motives of friendſhip and generoſity †. But what is worſt of all, he ſeems to have baniſhed entirely from his thoughts, that to the valour of his ſubjects, and their abhorrence of the preceding tyrant, Richard III. rather than to their ſenſe of his ſuperior right to the ſucceſſion, that his unworthy brows were ever encircled with a diadem.

In this reign the arbitrary deciſions of the Star-Chamber (which had been new-modelled, and armed with the moſt dangerous and unconſtitutional powers) were ſoon grievouſly felt by individuals, and gave great offence to the people, who teſtified their abhorrence of its proceedings, and the hoſtility of its inſtitution, in loud and univerſal

* Black. Comment. vol. iv. p. 422.

† Rapin, vol. i. p. 691.——Hume's Hiſt. Eng. vol. iii. p. 395.

complaints

complaints. In judging of right and wrong, upon ſubjects which affect general intereſts of the community, the people are ſeldom miſtaken. It is no wonder, therefore, that they dreaded the conſequences of an innovation, whoſe object was to batter down trial by jury, the ſtrongeſt palladium of Engliſh liberty, and which they had for ages conſidered to have been, as it were, ingrafted into the conſtitution, with all the other parts of the Great Charter *. In proportion, however, as the ſpirit of independence roſe higher in the nation, the averſion to it increaſed, till it was entirely demoliſhed by act of parliament in the reign of Charles I. previous to the civil wars.

Henry, whoſe political abilities were deep and intereſted, had eſtabliſhed his throne on the moſt ſolid foundation, by uniting the red and white roſes; and by a prudential mar-

* "It is computed that above thirty confirmations of the Great Charter were, at different times, required of ſeveral Kings, and granted by them in full parliament." A laudable jealouſy of national privileges, worthy of being admired and imitated. Hume's Hiſt. Eng. vol. ii. p. 306.

riage

riage of his daughter Margaret with James IV. King of Scotland, he gave additional ſtrength and ſecurity to his government, and built, as he ſaid, *a wall of braſs round his kingdom* *. This political connection alone entitles him to the higheſt praiſe, and is far beyond the boiſterous and ſhallow ſchemes of his predeceſſors, who had been taught, after a warfare of ages, at the expence of immenſe treaſure, and the blood of myriads of their beſt ſubjects, that to bring about a union by conqueſt, with a people fierce and warlike, and heated with the enthuſiaſm of national honour, was an impracticable undertaking; eſpecially when it is conſidered that nature had fortified them with almoſt inſurmountable barriers.

With theſe advantages, the ſubtle diſpoſition of the man, in which it is difficult to ſay, whether his avarice or thirſt of abſolute power was moſt predominant, joined to his being at peace both at home and abroad, palpable opportunities were opened to him

* Bacon Lord St. Alban's. Hiſt. Hen. VII. edit. 1622. p. 231. Rapin, vol. i. p. 690, n. 3.

to

to depreſs his ſubjects; the which he did not fail to embrace, through the medium of two of the moſt unworthy of mankind, Sir Richard ~~Elpom~~ Empſon and Edmund Dudley, Eſq; two of his miniſters: the former, who was the ſon of a ſieve-wright, "triumphed always "upon the *deed done*, putting off all other "reſpects whatſoever;" the latter gloried to "put hateful buſineſs into good language*."

Uncontrouled, therefore, by apprehenſion or oppoſition of any kind, Henry gave full ſcope to his natural propenſity; and avarice, which had ever been his ruling paſſion, being increaſed by age, and encouraged by abſolute authority broke all reſtraints of ſhame or juſtice †, ſo that Epſom and Dudley proceeded in the execution of his deſigns, with all that eaſe and calmneſs which uſually attend the performance of worthy actions.

By their knowledge in law, theſe men were qualified to pervert the forms of juſtice to the oppreſſion of the innocent; and

* Lord St. Alban, p. 209.

† Rap. vol. 1, p. 689. Hume, vol. 3, p. 387.

the formidable authority of the king ſupported them in all their iniquities.

It was their uſual practice, at firſt, to obſerve ſo far the appearance of law, as to indict thoſe whom they intended to oppreſs; and when the bills were found, then preſently to commit them to priſon. There they languiſhed, without ever being brought to trial, and were at length obliged, in order to recover their liberty, to pay heavy fines and ranſoms, which were called mitigations and compoſitions. By degrees, the very appearance of law was neglected: the two miniſters ſent forth their precepts to attach men, and ſummon them before themſelves and ſome others, at their private houſes, in a court of commiſſion, where, in a ſummary manner, without trial by jury, arbitrary decrees were iſſued, both in pleas of the crown and civil controverſies. Juries themſelves, when ſummoned, proved but ſmall ſecurity to the ſubject, being browbeaten by theſe minions of power, nay fined, impriſoned, and puniſhed, if they gave ſentence againſt their inclination. The whole

ſyſtem

ſyſtem of the feudal law, which ſtill prevailed, was turned into a ſcheme of the moſt violent oppreſſion. Even the king's wards, after they came of age, were not ſuffered to enter into poſſeſſion of their lands, without paying exorbitant fines. Men were alſo harraſſed with informations of intruſion upon ſcarce colourable titles. When an outlawry in a perſonal action was iſſued againſt any man, he was not allowed to purchaſe his charter of pardon, except on the payment of a great ſum; and if he refuſed the compoſition required of him, the ſtrict law, which, in ſuch caſes, allows forfeiture of goods, was rigorouſly inſiſted on. Nay, without any ſemblance of juſtice, the half of men's lands and rents were ſeized during two years, as a penalty in caſe of outlawry. But the chief means of oppreſſion, employed by theſe miniſters, were the penal ſtatutes, which, without conſideration of rank, quality, or ſervices, were rigidly put in execution againſt men of all denominations. Spies, informers, queſtmongers and promoters, the curſes of ſociety, were rewarded and encouraged in every quarter of

the kingdom: and no difference was made, whether the ſtatute was beneficial or hurtful, recent or obſolete, poſſible or impoſſible to be executed. The ſole end of the king and his miniſters was to amaſs money, and bring every one under the iron rod of their authority. In ſhort, Henry at laſt laid aſide all reſtraint, and ruled with ſo abſolute a ſway, that his own good will and pleaſure became the ſupreme law to his people; while he continued to worſhip the dæmon of avarice with unremitting aſſiduity. And it is a proof how much he domineered over his parliament when Dudley, who was ſo extremely obnoxious to the nation, was choſen, at his requeſt, ſpeaker of the houſe of commons *.

There are times when a people, however ſenſible of injuries, are deterred from proceeding to extremities to endeavour to remove them; either through the want of reſpectable leaders, or fearing the dangers that

* Lord St. Alban's Hiſt. Hen. VII. p. 209, 210, 211, 214. Hume's Hiſt. England, vol. 3, p. 388. Rapin, vol. 1. p. 685, 686.

may

may attend an unſucceſsful attempt to obtain them. The quarrels of the houſes of York and Lancaſter, which had drenched the kingdom in blood, were ſtill recent in their minds, and inclined them, no doubt, rather to ſubmit to theſe oppreſſions, than to hazard the plunging themſelves again into freſh miſeries. But their repinings became deep and general, and, like a fire that had been half ſmothered, burſt out, in the ſucceeding reigns, with redoubled fury upon the heads of their oppreſſors, and afforded a laſting, but ſevere and juſt example, that the democratical part of the nation, animated in the defence of liberty, is capable of teaching arbitrary monarchs, that their rights are not to be invaded with impunity, and that, though for a while the balance of equal and regular government may be diſturbed by their unconſtitutional practices, it muſt at laſt ſubſide into its proper equilibrium.

In the midſt of his all-graſping career, Henry found his health beginning to decline, and he began to caſt his eyes towards that

that future exiſtence, which the iniquities and ſeverities of his reign rendered a very diſmal proſpect to him. To allay the terrors that harrowed up his ſoul, he endeavoured, by diſtributing alms, and founding religious houſes, to make atonement for his crimes, and to purchaſe, by the ſacrifice of part of his ill-gotten treaſures, a reconciliation with his offended Maker. Remorſe even ſeized him at intervals, for the abuſe of his authority by Empſon and Dudley, but not ſufficient to make him ſtop the rapacious hand of thoſe oppreſſors. Sir William Capel, who had been mayor of London, was fined two thouſand pounds for neglecting to bring to juſtice a coiner of falſe money, and was committed to the Tower for daring to murmur againſt the iniquity. Hawes, an alderman of London, was indicted under ſome frivolous pretence, and died of vexation before his trial came to an iſſue. Sir Laurence Ailmer, who had been mayor, and his two ſheriffs, were condemned in one thouſand pounds; and Sir Laurence, for refuſing to make payment, was ſent to priſon, where he remained till

Epſom

Epſom himſelf was committed in his place. The king gave countenance to all theſe oppreſſions, till death, by its nearer approaches, impreſſed new terrors upon him; and he then ordered, by a general clauſe in his will, that reſtitution ſhould be made of that gold which could be of no ſervice to him in the grave, to all thoſe whom he had injured. He died on the 22d April, 1509, of a conſumption, at his favourite palace of Richmond, after a reign of twenty-three years and eight months, and in the fifty-ſecond year of his age *. He had accumulated near eighteen hundred thouſand pounds ſterling, which he kept in ſecret places only known to himſelf; "a huge maſs of money, ſays Lord St. Alban, even for theſe times†."

But notwithſtanding there was hardly a ſtatute of this reign introductive of a new law, or modifying the old, but what either directly or obliquely tended to fill the king's coffers, and in ſpite of the oppreſſions above

* Lord St. Alban, p. 229, 232. Rapin, vol. i. p. 689, 690. Hume, vol. iii. p. 395.

† P. 230.

deſcribed,

deſcribed, yet the time was come when the enlargement of commerce, navigation, and the ſpirit of improvement, infuſed themſelves into the nation, and gradually increaſed induſtry and the arts every where.—Men of an inferior rank not only acquired a ſhare in the landed intereſt, but created to themſelves a conſiderable property of a new kind, in ſtock, merchandiſe, art, credit, and foreign commercial intercourſe.

Hence the introduction and progreſs of theſe proved the introduction and progreſs of freedom; and this conſequence affected men both in their perſonal and civil capacities. But if we conſider the ancient ſtate of Europe, we ſhall find that the far greater part of ſociety were every where bereaved of their *perſonal* liberty, and lived entirely at the will of their maſters. Every one that was not noble, was a *ſlave*. The peaſants were ſold along with the land. The *few* inhabitants of cities were not in a better condition. Even the gentry themſelves were ſubjected to a long train of ſubordination, under the greater barons or chief vaſſals of

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the crown; who, though ſeemingly placed in a high ſtate of ſplendour, yet, having but a ſlender protection from law, were expoſed to every tempeſt of the ſtate; and, by the precarious condition in which they lived, paid dearly for the power of oppreſſing and tyrannizing over their inferiours. The firſt incident which broke in upon this violent ſyſtem of government, was the practice, begun in Italy, and imitated in France, of erecting communities and corporations, endowed with privileges, and a ſeparate municipal government, which gave them protection againſt the tyranny of the barons, and which the prince himſelf deemed it prudent to reſpect. The barons entertained early ſymptoms of jealouſy againſt the progreſs of the arts, as encroachments on their licentious power. A law was enacted, 7th Henry IV. chap. 17 *, prohibiting, by its very title, every man who did not poſſeſs twenty ſhillings a year in land, from binding his ſon or daughter to be an apprentice to any trade. They found already that the cities

* Repealed by 8th Henry VI. c. 11.—12th Henry VII. c. 1.—5th Eliz. c. 4, ſ. 27.

began to drain the country of the labourers and huſbandmen; and did not forſee how much the increaſe of commerce would increaſe the value of their eſtates. The kings, to encourage the boroughs, granted them this privilege, that any villain, who had lived a twelvemonth in any corporation, and had been of the guild, ſhould be thenceforth regarded as free. The relaxation of the feudal tenures, and an execution, ſomewhat ſtricter, of the public law, beſtowed an independence on vaſſals, which was unknown to their forefathers. And even the peaſants themſelves, though later than other orders of the ſtate, made their eſcape from thoſe bonds of villenage or ſlavery in which they had formerly been retained.

The ancient barons, obliged to maintain themſelves continually in a military poſture, employed not their villains as domeſtic ſervants, much leſs as manufacturers; but compoſed their retinue of freemen, whoſe military ſpirit rendered the chieftan formidable to his neighbours, and who were ready to attend him in every warlike enterprize. The villains were entirely occupied in the cultiva-

tion

tion of their maſter's land, and paid their rents either in corn, cattle, and other produce of the farm, or in ſervile offices which they performed about the baron's family, and upon the farms which he retained in his own poſſeſſion. In proportion as agriculture improved, and money increaſed, it was found, that theſe ſervices, though extremely burthenſome to the villain, were of little advantage to the maſter; and that the produce of a large eſtate could be much more conveniently diſpoſed of by the peaſant's themſelves, who raiſed it, than by the landlord or his bailiff, who were formerly accuſtomed to receive it. A commutation was therefore made of rents for ſervices, and of money-rents for thoſe in kind; and as men, in a ſubſequent age, diſcovered that farms were better cultivated where the farmer enjoyed a ſecurity in his poſſeſſion, the practice of granting leaſes to the peaſant began to prevail, which entirely broke the bonds of ſervitude, already much relaxed from the former practices. After this manner, villenage went gradually into diſuſe throughout the more civilized parts of Europe. The

intereſt of the maſter, as well as that of the ſlave, concurred in this alteration.

The *lateſt* laws which we find in England for enforcing or regulating this ſpecies of ſervitude, were enacted in the reign of Henry VII. and though the ancient ſtatutes on this ſubject remain ſtill unrepealed by Parliament, it appears, that before the end of Elizabeth's reign, the diſtinction of villain and freeman was totally, though inſenſibly aboliſhed; and that no perſon remained in that ſtate, to whom the former laws could be applied.

Thus *perſonal* freedom became almoſt general in Europe; an advantage which paved the way for the increaſe of *political*, or *civil* liberty; and which, even where it was not attended with this ſalutary effect, ſerved to give the members of the community ſome of the moſt conſiderable advantages of it.

The Engliſh conſtitution, ever ſince the invaſion of this iſland, by the Saxons, may boaſt of this pre-eminence, that in no age the

the will of the monarch was ever entirely abſolute and uncontrouled: but in other reſpects the balance of power has extremely ſhifted among the ſeveral orders of the ſtate; and this fabric has experienced the ſame mutability that has attended all human inſtitutions. The ancient Saxons, like the other German nations, where each individual was enured to arms, and where the independence of men was ſecured by a great equality of poſſeſſions, ſeem to have admitted a conſiderable mixture of democracy into their form of government, and to have been one of the freeſt nations of which there remains any account in hiſtory. After this tribe was ſettled in England, eſpecially after the diſſolution of the heptarchy, the great extent of the kingdom produced a great inequality in property, and the balance ſeems to have inclined to the ſide of ariſtocracy.

The Norman conqueſt threw more authority into the hands of the ſovereign, which, however, admitted of great controul; though derived

derived leſs from the general forms of the conſtitution, which were inaccurate and irregular, than from the independent power enjoyed by each baron in his particular diſtrict or province.

The eſtabliſhment of the great charter exalted ſtill higher the ariſtocracy, impoſed regular limits on royal power, and gradually introduced ſome mixture of democracy into the conſtitution. But even during this period, from the acceſſion of Edward I. to the time of Henry VII. the condition of the commons was no wiſe eligible; a kind of *Poliſh ariſtocracy* prevailed; and though the kings were limited, *the people were as yet far from being free.* It required the greateſt exertions of authority of ſucceeding princes, to pull down thoſe diſorderly and licentious tyrants, who were equally averſe from peace and freedom, and to eſtabliſh that regular execution of the laws, which, in a following age, enabled the people to erect, and bring to perfection, the moſt beautiful, regular, and equitable ſyſtem of liberty, that ever

ever was found compatible with government *.

* Lord St. Alban, the hiſtorian of Henry VII. mightily extols the ſagacity of that king. He even goes the length to rank him as the beſt lawgiver of this nation, next to Edward I. and informs us, that he was always ready to remunerate his people with good laws, by way of retribution for the *treaſures* they beſtowed upon him, (p. 71.); however, he ſeems upon the whole to have drawn too favourable a portrait of him; though it muſt be confeſſed, that the diſeaſe of his nature inclined him more to the heaping up of riches than to ſhedding the blood of his ſubjects. Nor is this at all ſurpriſing; for as his lordſhip's eſtate was forfeited by the ſentence paſſed upon him, and as he lived only upon a penſion allowed him by James I. who always ſpoke of his great grandfather Henry VII. in terms of admiration, he found it convenient to make his court to James by repreſenting that prince as a pattern of wiſdom in the management of the political machine (ſee above p. 119).

Among the many laws enacted in this reign, it was ordained, that appeal of murder be proſecuted within a year and a day. 3 Henry VII. c. 1. Formerly it did not uſually commence ſo ſoon, and as the friends of the perſon murdered often in the interval compounded matters with the criminal, juſtice was by that means eluded.

A law was made, declaring it felony to carry away any maid, widow, or wife, (female wards and bond women excepted) having lands or goods, or who was heir apparent unto her anceſtor. 3 Hen. VII. c. 2.

Another law was enacted, of conſiderable utility, whereby it was ordained, that all deeds of gift of goods, and chattles, made in truſt to the uſe of the perſon who made ſuch

deed

deed or gift, ſhall be void. 3 Hen. VII. c. 4. An act was made to abridge the benefit of clergy, by allowing of it but once. 4 Hen. VII. c. 13.

Another ſtatute was made to prevent the decaying of houſes of huſbandry, or not laying of convenient land for the maintenance of the ſame. 4 Henry VII. c. 19. Incloſures at that time began to be more frequent, and arable lands, which could not be manured without people and families were turned into paſture. This, it was then thought, bred a decay of people, towns, churches and tithes. It was therefore enacted, that all houſes of huſbandry, that were uſed with twenty acres of ground, and upwards, ſhould be maintained and kept up for ever, together with a competent proportion of land to be uſed and occupied with them, upon pain of ſeizure of the land itſelf, by the king or lords of the fee, as to half of the profits, till the houſes and land were reſtored. By this means, the houſes being kept up, did of neceſſity enforce a dweller, and the proportion of land for occupation being kept up, did likewiſe oblige that dweller, not to be a beggar or cottager, but a man of ſome ſubſtance, that might keep lands and ſervants, and ſet the plow a-going. Wherefore it gave ſtrength to the kingdom, to have farms of a ſtandard ſufficient to maintain an able body of men, capable of paying taxes and ſubſidies, and did in effect amortize a great part of the lands of the kingdom, unto the occupation of the huſbandry or middling people, of a condition between gentlemen and peaſants, or cottagers. This eſtabliſhment increaſed alſo the military power of the kingdom, ſince it is allowed by the beſt judges in the art of war, that the ſtrength of an army conſiſts chiefly in its infantry or foot: and to make good infantry, it requires men to be bred, not in a ſervile or indigent faſhion, but in a free and plentiful manner. Therefore, if a ſtate run moſt to *noblemen and gentlemen*, and that the huſbandmen and plowmen be but

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as their work-folks and labourers, or elſe mere cottagers, which are but houſed beggars, you may have a good cavalry, but never vigorous or ſtable bands of foot. Lord St. Alban, Hiſt. Henry VII. 73, 74. There ſcarcely paſſed any ſeſſion during this reign without ſome ſtatute againſt engaging retainers, and giving them badges or liveries; (3 Hen. VII. c. 1, & 12. 11 Hen. VII. c. 3. 19 Hen. VII. c. 14.) a practice by which they were, in a manner, liſted under ſome great feudal lord, and were kept in readineſs to aſſiſt him in all wars, inſurrections, riots, violences, and even in bearing evidence for him in courts of juſtice. (3 Hen. VII. c. 12. 11 Hen. VII. c. 25.) This diſorder, which had prevailed during many reigns, when the law could give little protection to the ſubject, was then deeply rooted in England, and it required all the vigilance and rigour of Henry to extirpate that ſpecies of feudal licentiouſneſs. There is a ſtory of his ſeverity againſt this abuſe; and it ſeems to merit praiſe, though it is commonly cited as an inſtance of his avarice and rapacity. The Earl of Oxford, his favourite general, in whom he always placed great and deſerved confidence, having ſplendidly entertained him at his caſtle of Heningham, was deſirous of making a parade of his magnificence, at the departure of his royal gueſt, and ordered all his retainers, with their liveries and badges, to be drawn up in two lines, that their appearance might be the more gallant and ſplendid. "My Lord," ſaid the King, "I have heard much of your "hoſpitality; but the truth far exceeds the report. Theſe "handſome gentlemen and yeomen, whom I ſee on both "ſides of me, are no doubt your menial ſervants." The Earl ſmiled, and confeſſed that his fortune was too narrow for ſuch magnificence. "They are moſt of them," ſubjoined he, "my retainers, who are come to do me ſervice at "this time, when they know I am honoured with your "Majeſty's preſence." The king ſtarted a little, and ſaid,

"By my faith, my Lord, I thank you for your good cheer, "but I must not allow my laws to be broken in my sight, "My attorney must speak with you." Oxford is said to have paid no less than fifteen thousand marks, as a composition for his offence. Lord St. Alban, Hist. Hen. VII. p. 211. Rap. Hist. Eng. vol. i. p. 686. Hume's Hist. Eng. vol. iii. p. 399.

The increase of arts and commerce, more effectually than all the severities of law, put an end to this pernicious practice. The nobility, instead of vying with each other in the number and boldness of their retainers, acquired by degrees a more civilized kind of emulation, and endeavoured to excel in the splendour and elegance of their equipage, houses, and tables. The common people, no longer maintained in vicious idleness by their superiors, were obliged to learn some calling or industry, and became useful both to themselves and to others. And it must be acknowledged, in spite of those who declaim so violently against refinement in the arts, or what they are pleased to call luxury, that, as much as an industrious tradesman is both a better man and a better citizen than one of those idle retainers, who formerly depended on the great families, so much is the life of a modern nobleman more laudable than that of an ancient baron.

But the most important law in its consequences, enacted during the reign of Henry, was that by which the nobility and gentry acquired a power of breaking the ancient entails, and of alienating their estates, (4 Henry VII. cap. 24); though it must be observed, that the practice of breaking entails, by means of a fine and recovery, was introduced in the reign of Edward IV. But it was not, properly speaking, law, till the statute of Henry VII. which, by correcting some abuses attending that practice, gave indirectly a sanction to it. By means of this law, joined to the beginning luxury and refinements of the age, the great fortunes of the barons

barons were gradually diſſipated, and the property of the commons encreaſed in England. It is probable, that Henry foreſaw and intended this conſequence, becauſe the conſtant ſcheme of his policy conſiſted in depreſſing the great, and exalting churchmen, lawyers, and men of new families, who were more dependent on him. Lord St. Alban, p. 242. Hume's Hiſtory of England, vol. 3. p. 401. Rapin, vol. 1. p. 691.

SECTION VII.

THE death of Henry VII. had been attended with as open and viſible a joy among the people as decency would permit, and the acceſſion and coronation of his ſon, Henry VIII. ſpread univerſally a declared and unfeigned ſatisfaction. Inſtead of a monarch jealous, ſevere, and avaricious, who, in proportion as he advanced in years, was ſinking ſtill deeper in theſe unpopular vices, a young prince of eighteen had ſucceeded to the throne, who, even in the eyes of men of ſenſe, gave promiſing hopes of his future conduct; much more in thoſe of the people, always enchanted with novelty, youth, and royal dignity. Even the vices of vehemence, ardour, and impatience, to which he was extremely ſubject, and which afterwards degenerated into tyranny, were conſidered as faults incident to unguarded youth, which would be corrected when time had brought him to greater moderation and maturity.—And as the contending titles of York and

Lancaſter

Lancaſter were now at laſt fully united in his perſon, men juſtly expected from a prince obnoxious to no party, that impartiality of adminiſtration, which had long been unknown in England.

But never was a prince leſs deſerving of theſe favourable impreſſions entertained of him by his people. For, as he advanced in years, the natural violence of his diſpoſition, intoxicated with ſovereign power, daily increaſed; and he proved himſelf to be one of the worſt monarchs that ever ſwayed the ſceptre of England. He was a cruel and unforgiving tyrant, vain, arrogant, rapacious, unjuſt, laſcivious, biggoted, obſtinate to perverſeneſs, opinionated and capricious; and nature had formed him in ſuch a mould that he was incapable of ſparing *any man in his anger, or woman in his luſt.* The treaſures which his father had extorted from his people, he laviſhed away with a ſpendthrift's hand. He extended the royal prerogative to a degree of oppreſſion hardly known in any preceding reign, and the ſubmiſſive, or rather ſlaviſh diſpoſition of his parliaments,

parliaments, made it the more eaſy for him to aſſume and maintain that entire dominion, by which his adminiſtration is ſo much diſtinguiſhed. Nay, he ſo thoroughly ſubdued the ſpirit of his ſubjects, by the roughneſs and tyranny of his domination, that, like African ſlaves, they were ſo perfectly reconciled to the yoke, as to bear, without almoſt wincing, the crueleſt acts of violence and oppreſſion, which, at their expence, he delighted invariably to exerciſe over them.

He began his ſanguinary reign, which was alſo a ſeries throughout of the greateſt blunders in politics that can well be imagined, by iſſuing a proclamation to encourage complaints; ſo that the rage of the nation was let looſe againſt all thoſe informers, who, as the baſe tools of his father, had enabled him to exerciſe an unlimited authority over the kingdom. They were thrown into priſon, and condemned to the pillory, where many of them fell a ſacrifice to the fury of the populace, who are but too often ready to cut before the point of juſtice, without examining the nature of the offence, the alleviating

leviating circumſtances attending it, or the malicious drift of proſecutions ariſing from a ſuſpected quarter *.

Empſon and Dudley, who were above all men moſt expoſed to public hatred, were ſummoned before the council, to anſwer for that conduct which had rendered them ſo obnoxious. Empſon made a ſhrewd apology for himſelf, as well as for his aſſociate. He told the council, that, ſo far from his being juſtly expoſed to cenſure for his paſt conduct, his enemies themſelves grounded their clamour on actions, which ſeemed rather to merit approbation: that a ſtrict execution of law was the crime of which he and Dudley were accuſed; though that law had been eſtabliſhed by general conſent, and though they had acted in obedience to the king, to whom the adminiſtration of juſtice was entruſted by the conſtitution: that it belonged not to them, who were merely the agents of ſupreme power, to determine

* Rapin, vol. 1, p. 703. Hume's Hiſt. England, vol. 3, p. 411.

what

what laws were recent or obſolete, expedient or hurtful, ſince they were all alike valid, ſo long as they were unrepealed by the legiſlature: that it was natural for a licentious populace to murmur againſt the reſtraints of authority; but all wiſe ſtates had ever made their glory conſiſt in the juſt diſtribution of rewards and puniſhments, and had annexed the former to the obſervance and enforcement of the laws; the latter to their violation and infraction: and that a ſudden overthrow of all government might be expected, where the judges were committed to the mercy of the criminals,—the rulers to that of the ſubjects.

Notwithſtanding this plauſible defence, Empſon and Dudley were ſent to the Tower, and ſoon after brought to their trial. The ſtrict execution of laws, however obſolete, could never juſtly be imputed to them as a crime in a free court of judicature; and it is likely, that even where they had exerciſed arbitrary power, the king, as they had acted by the ſecret commands of his father, was not willing that their conduct ſhould undergo

undergo too ſevere a ſcrutiny. But as he choſe rather to hide the imperfections of his father, who was alone to blame, he ſtrove to gratify the people with the puniſhment of thoſe obnoxious miniſters, by countenancing crimes nowiſe probable to be imputed to them, and indeed abſolutely impoſſible, namely, that they had entered into a conſpiracy againſt their maſter, and had intended, on the death of the late king, to have ſeized by force the reigns of government into their own hands. The jury were ſo far moved by popular prejudices, joined to court influence, as to give a verdict againſt them, which was afterwards confirmed by a bill of attainder in parliament; and, at the earneſt deſire of the people, was executed by warrant from the king. Thus, in thoſe arbitrary times, juſtice was equally violated, whether the ſovereign ſought power and riches, or courted popularity; but to give the greater colour to their condemnation, it was alledged on the ſide of the proſecution, that they were not accuſed of executing the laws, or of diſobeying the king, but of ſtretching the laws beyond their due

bounds, and exceeding their ſovereign's commiſſion; and, as a proof of their criminality in this reſpect, it was urged, with too much truth, that they had cauſed individuals to be charged as tenants *in capite*, who held not their lands of the crown *.

The wars in which Henry was engaged, and his uſual habits of expence, ſoon exhauſted the treaſures which his father had amaſſed †. To ſupply his wants, he had recourſe to this expedient:—He iſſued this year, 1523, privy ſeals to the moſt wealthy, demanding loans of particular ſums. This act of power, though ſomewhat irregular and tyrannical, had been formerly practiſed by kings of England, and the people were now familiarized to it. But Henry, deſpiſing to be limited merely by the example

* Lord St. Alban, p. 210. Rapin, vol. 1, p. 703. Hume, vol. 3, p. 412.

† "As one extreme commonly produces another, ſo his father's covetouſneſs led him to be prodigal, and the vaſt wealth which was left him being reckoned no leſs than 1,800,000 l. was in three years diſſipated, as if the ſon, in his expence, had vied induſtry with his father in all his thrift."—Burnet's Hiſt. Reform. vol. 1. p. 2.

of

of his predeceſſors, extended his authority much farther. He publiſhed an edict for a general tax upon his ſubjects, which he ſtill called a loan; and he levied five ſhillings in the pound upon the clergy, two ſhillings upon the laity. This pretended loan, as being more regular, was in fact more dangerous to the liberties of the people, as it furniſhed a precedent for the king's impoſing taxes, without conſent of parliament.

Henry, on the 15th day of April, ſummoned a Parliament, together with a Convocation; and found neither of them of a temper to complain of the infringement of their privileges. It was only doubted how far they could carry their liberality to the king. Cardinal Wolſey, his miniſter, the ſon of a butcher at Ipſwich, who had raiſed himſelf into power by miniſtering to the pleaſures, and flattering the ambition of his maſter, undertook the management of this affair. He began with the clergy, in hopes that their example would influence the parliament to grant a large ſupply. He demanded a half of the eccleſiaſtical revenues payable in five

years, or two ſhillings in the pound during that time; and though he met with oppoſition, he reprimanded thoſe who were refractory in ſuch ſevere terms, that his requeſt was at laſt complied with. The cardinal afterwards, attended by ſeveral of the nobility and prelates, came to the Houſe of Commons; and deſcanting, in a long ſpeech, upon the urgency of public affairs, he demanded a grant of L. 800,000, divided into four yearly payments. So large a grant was unuſual from the Commons, and though the cardinal's demand was ſeconded by Sir Thomas More, the ſpeaker, and ſeveral other members attached to the court, the Houſe could not be prevailed with to comply.—They only voted two ſhillings in the pound on all who enjoyed twenty pounds a-year and upwards; one ſhilling on all who poſſeſſed between twenty pounds and forty ſhillings a-year; and on the other ſubjects above ſixteen years of age a groat a-head. This laſt ſum was divided into two yearly payments; the former into four, which did not exceed ſixpence in the pound. The grant of the Commons was but the moiety

of

of the ſum demanded. The cardinal, being mortified with the diſappointment, came again to the Houſe, and deſired to reaſon with thoſe who refuſed to comply with the king's requeſt; but the commons replied by their ſpeaker, "That it was the order of that houſe to hear, but not to reaſon, except among themſelves." The cardinal thus diſappointed, again drew their attention to the abſolute neceſſity of ſupporting the king with money to anſwer the exigencies of the ſtate; alledging, that if he was ill ſupplied, it would in all probability retard the operations of his intended campaign; and concluded with repreſenting the inconveniencies that might attend the nation by withholding their ſupplies from the king in ſo critical an emergency.

But when the news of this refractory humour of the commons came to the knowledge of Henry, he burſt out into a violent fit of rage. He immediately ſent for Edward Montagu, Eſq; one of the members that had great influence and was much reſpected by the houſe, who being introduced to this imperous monarch, he had the mortification to have his

ears

ears ſaluted with the following ſpeech, pronounced by the king. "*Ho! will they not ſuffer my bill to paſs?*" and laying his hand on Montagu's head, who was then on his knees before him, "Go, ſaid he, get my bill paſſed by to-morrow, or elſe to-morrow this head of yours ſhall be off." The king was ſo diſſatisfied with this ſaving diſpoſition of the Commons, that, as he had not called a parliament during ſeven years before, he allowed ſeven more to elapſe, before he ſummoned another. And, on pretence of neceſſity, he levied, in one year, from all who were worth forty pounds, what the parliament had granted him payable in four years, which was a freſh invaſion of national privileges, and aſcribed in thoſe days to the violent counſels of the cardinal, who, truſting to the protection afforded by his eccleſiaſtical character, was the leſs ſcrupulous in his encroachments on the civil rights of the nation *.

* Rapin, vol. 1. p. 752, 753. Grove's Life and Times of Cardinal Wolſey, vol. 3. p. 250, 251. Hume's Hiſt. of Eng. vol. 4. p. 47, 48.

This

This year (1525), Henry had reaſon to dread a rupture with the Emperor, and in order to provide againſt it he was reſolved to fill his exhauſted treaſury by freſh impoſitions upon his own ſubjects; and as the parliament had diſcovered ſome reluctance in complying with his demands, he followed, as is believed, the counſel of Wolſey, and reſolved to make uſe of his prerogative alone for that purpoſe. He iſſued commiſſions to all the counties of England, for levying four ſhillings in the pound upon the clergy, three ſhillings and fourpence upon the laity; and ſo uncontroulable did he deem his authority, that he took no care to cover, as formerly, this arbitrary exaction, even under the ſlender pretence of a loan. But he ſoon found, that he had preſumed too far on the paſſive ſubmiſſion of his ſubjects. The people, diſpleaſed with an exaction beyond what was uſually levied in thoſe days, and further diſguſted with the illegal method of impoſing it, broke out in murmurs, complaints, oppoſition to the commiſſioners; and their refractory diſpoſition threatened a general inſurrection. But Henry had the prudence to

deſiſt

deſiſt from the execution of this dangerous deſign. He ſent letters to all the counties, declaring that he meant no force by this laſt impoſition, and that he would take nothing from his ſubjects but by way of benevolence. He flattered himſelf, that his condeſcenſion in employing that diſguiſe would ſatisfy the people, and that no one would dare to render himſelf obnoxious to royal authority, by refuſing any payment required of him in this manner. But the ſpirit of oppoſition, once rouſed, could not ſo eaſily be quieted at pleaſure. One of the city counſel objecting the ſtatute of Richard III.* by which benevolences were for ever aboliſhed, it was replied by the court, that, Richard being an uſurper, and his parliament a factious aſſembly, his ſtatutes could not bind *a lawful and abſolute monarch*, who held his crown by hereditary right, and needed not to court the favour of a licentious populace. The judges even went ſo far, as to affirm poſitively, that the king might exact by commiſſion any ſum he pleaſed; and the privy council gave a ready aſſent to this decree,

* 1 Ric. III. c. 2.

which

which annihilated the moſt valuable privileges of the people, and rendered all their other privileges precarious. Nothing, however, could be more dangerous or more illegal than this doctrine, which gave a ſanction to the king, to put his hand into the pockets of his ſubjects, without the conſent of parliament. But though there have been judges ſo hardy as to determine points of this conſequence, very few of them have eſcaped the puniſhment due to their preſumption.

Armed with ſuch formidable authority of royal prerogative, and a pretence of law, Wolſey ſent for the mayor of London, and deſired to know what he was willing to give for the ſupply of his Majeſty's neceſſities. The mayor ſeemed deſirous, before he ſhould declare himſelf, to conſult the common council; but the cardinal required, that he and all the aldermen ſhould ſeparately confer with himſelf about the benevolence; and he eluded, by that means, the danger of a formed oppoſition. Mat-

ters, however, went not ſo ſmoothly in other parts.

The commiſſioners in the country, during theſe tranſactions, were endeavouring to raiſe the *benevolence*, but met with great oppoſition wherever they came. The Duke of Suffolk ſat in Suffolk, and, by his polite carriage, obtained of the clothiers a conſent to grant the king a ſixth part of their ſubſtance; but when they had deliberated upon the matter, inſtead of a compliance, they were no ſooner returned home, than they diſcharged all their workmen; ſo that an inſurrection immediately enſued; and, in a very ſhort time, above four thouſand men were aſſembled together, who declared, "that they would kill the commiſſioners that were there employed to collect the benevolence." The king's generals ſoon collected a large army to ſuppreſs the inſurgents; and the Duke of Norfolk, who commanded a detachment of it, marched againſt them. As ſoon as he came up with them, he demanded who was their captain? whereupon a man, named John Green, inſtantly

ſtantly replied, that his name was *Poverty*, and his couſin's *Neceſſity;* and that it was they who had cauſed this commotion. He then laid a pathetic ſtate of their complaints before the Duke, who expreſſed much concern for them, and adviſed them to diſperſe, which they immediately obeyed.

The Duke took only four of them with him to anſwer for the offences of the reſt; but he, at the ſame time, gave the ſtrongeſt aſſurances to the whole body, that he would intercede with the king to pardon them all. Theſe four were committed priſoners to the Fleet-priſon, as were two more from other parts.

On the twenty-ninth day of May, they were brought before the Star-Chamber, where the cardinal, after expatiating on the heinous offence of rebellion, declared to them, "That his Majeſty was pleaſed to pardon all his ſubjects, who either refuſed to pay the loan or benevolence; but that as the priſoners had been very active to ſtir up the people againſt the government, they

ſhould find ſecurity for their good behaviour." The priſoners anſwered, "That they could find none;" upon which the cardinal generouſly ſaid, "As they were his countrymen, he would be ſecurity for them;" and his Grace of Norfolk imitating his example by a like offer, they were upon that diſcharged; and thus ended all the proceedings, both in reſpect to the *loan* and the *benevolence* *.

About

* Grove's Life of Wolſey, p. 358, 359, 360.
Rapin, vol. 1. p. 763, 764.
Hume, vol. 4. p. 62, 63.

Shakeſpear, in his Henry VIII. Act 1. Scene 4, repreſents the diſcontents of the nation, in regard to this benevolence, with ſuch energy of expreſſion, that we hope to be pardoned in tranſcribing the part.

Enter QUEEN, uſhered in by the Dukes of NORFOLK and SUFFOLK. Preſent the KING, CARDINAL and NOBLES, in Council.

Queen. Nay, we muſt longer kneel; I am a ſuitor.
King. Ariſe, and take place by us; half your ſuit
Never name to us; you have half our power:
The other moiety, 'ere you aſk, is given;
Repeat your will, and take it.
Queen. Thank your Majeſty.
That you would love yourſelf, and in that love
Not unconſider'd leave your honour, nor

The

About this period [1527], Henry, from the inconſtancy of his diſpoſition, entertained

The dignity of your office, is the point
Of my petition.
King. Lady mine, proceed.
Queen. I am ſollicited, not by a few,
And thoſe of true condition, that your ſubjects
Are in great grievance. There have been commiſſions
Sent down among 'em, which have flaw'd the heart
Of all their loyalties; wherein although [*To Wolſey.*
My good Lord Cardinal, they vent reproaches
Moſt bitterly on you as putter on
Of theſe exactions, yet the king our maſter
(Whoſe honour Heav'n ſhield from ſoil) eſcapes not
Language unmannerly; yea ſuch which breaks
The ſides of loyalty, and almoſt appears
In loud rebellion.
Nor. Not almoſt appears,
It doth appear; for upon theſe taxations,
The clothiers all, not able to maintain
The many to them longing, have put off
The ſpinſters, carders, fullers, weavers, who
Unfit for other life, compell'd by hunger
And lack of other means, in deſp'rate manner
Daring th' event to th' teeth, are all in uproar,
And danger ſerves among them.
King. Taxation?
Wherein? and what taxation? my Lord Cardinal,
You that are blam'd for it alike with us,
Know you of this taxation?

Wol.

tained the thoughts of being divorced from Catherine his queen. This princeſs had been married

Wol. Pleaſe you, Sir,
I know but of a ſingle part in ought
Pertains to th' ſtate, and front but in that file
Where others tell ſteps with me.
Queen. No, my Lord,
You know no more than others: but you frame
Things that are known alike, which are not wholeſome
To thoſe which would not know them, and yet muſt
Perforce be their acquaintance. Theſe exactions
(Whereof my ſov'reign would have note) they are
Moſt peſtilent to th' hearing; and to bear 'em,
The back is ſacrifice to th' load; they ſay,
They are devis'd by you, or elſe you ſuffer
Too hard an exclamation.
King. Still exaction!
The nature of it, in what kind let's know
In this exaction!
Queen. I am much too vent'rous
In tempting of your patience, but am bolden'd
Under your promis'd pardon. The ſubject's grief
Comes through commiſſions, which compel from each
The ſixth part of his ſubſtance, to be levy'd
Without delay; and the pretence for this
Is nam'd your wars in France. This makes bold mouths,
Tongues ſplit their duties out, and cold hearts freeze
Allegiance in them; all their curſes now
Live where their pray'rs did; and it's come to paſs,
That tractable obedience is a ſlave
To each incenſed will. I would your Highneſs

Would

married at St. Paul's, on the 14th November, 1501, to Arthur, prince of Wales, the king's

Would give it quick conſideration, for
There is no primer baſeneſs.
King. By my life,
This is againſt our pleaſure.
Wol. And for me,
I have no further gone in this, than by
A ſingle voice, and that not paſt me but
By learned approbation of the judges.
If I'm traduc'd by tongues, which neither know
My faculties nor perſon, yet will be
The chronicles of my doing; let me ſay,
'Tis but the fate of place, and the rough brake
That virtue muſt go through: we muſt not ſtint
Our neceſſary actions, in the fear
To cope malicious cenſures; which ever,
As rav'nous fiſhes, do a veſſel follow
That is new trimm'd; but benefit no further
Than vainly longing. What we oft do beſt,
By ſick interpreters, or weak ones, is
Not ours, or not allow'd: What worſt, as oft
Hitting a groſſer quality, is cry'd up
For our beſt act: if we ſtand ſtill, in fear
Our motion will be mock'd or carped at,
We ſhould take root here where we ſit:
Or ſit ſtate-ſtatues only.
King. Things done well,
And with a care, exempt themſelves from fear:
Things done without example, in their iſſue
Are to be fear'd. Have you a precedent

Of

brother; and they lived together, as man and wife, till the 2d day of April following; and not only had their bed ſolemnly bleſt, when they were put into it, on the night of their marriage, but alſo were ſeen publicly in bed for ſeveral days after, and went down to reſide at Ludlow-Caſtle, in Wales, where they ſtill beded together. But Prince Arthur, though a ſtrong and healthy youth, when he married her, yet died ſoon after, which ſome thought was haſtened by his too

Of this commiſſion? I believe not any.
We muſt not rend our ſubjects from our laws,
And ſtick them in our will. Sixth part of each!
A trembling contribution!——why we take
From ev'ry tree, lop, bark, and part o' th' timber:
And though we leave it with a root thus hackt,
The air will drink the ſap. To ev'ry country
Where this is queſtion'd, ſend our letters, with
Free pardon to each man that has deny'd
The force of this commiſſion; pray look to't,
I put it to your care.
Wol. A word with you. [*To the Secretary.*
Let there be letters writ to ev'ry ſhire
Of the king's grace and pardon: The griev'd commons
Hardly conceive of me; let it be noiſ'd,
That through our interceſſion, this revokement
And pardon comes; I ſhall anon adviſe you
Further in the proceeding. [*Exit Secretary.*

early

early marriage. Catherine, however, when ſhe appeared before *Wolſey* and *Campeggio*, who were appointed to try the validity of the king's marriage, and who ſat on the 21ſt June, 1529, told Henry, " that ſhe had been his wife upwards of twenty years, and had borne him ſeveral children, and had ever ſtudied to pleaſe him; and proteſted, he had found her a true maid, as to the truth of which ſhe appealed to his own conſcience * ".

Henry could not help publicly owning, that ſhe had ever been a dutiful and affectionate wife, and that her whole conduct had been conſiſtent with the ſtricteſt probity and honour. But he had already caſt the eyes of affection upon the young and fair Ann Boleyn; and perhaps this was the ſole ſpring which moved him to diſſolve the marriage with his poor queen, whoſe beauty having fallen into decay by age and infirmities, helped to puſh him on to the accompliſhment of his inordinate deſires †.

* Burnet's Hiſt. Reform, vol. 1. p. 35, 72, 73. Hume, vol. 4. p. 88. Rap. vol. 1, p. 783, n. 8.

† Camden's Eliz. Introd. p. 1, 2. Burnet's Refor. vol. 1, p. 41.

Ann Boleyn, who had attained the age of two and twenty, had been appointed maid of honour to the queen; and having had frequent opportunities of being ſeen by Henry, and of converſing with him, ſhe acquired an entire aſcendant over his heart. Henry's pretended ſcruples made him break off all conjugal commerce with the queen; but as he ſtill ſupported an intercourſe of civility and friendſhip with her, he had occaſion, in the frequent viſits which he paid her, to be more deeply ſmitten with the beauty and charms of his fair enſlaver. Finding the accompliſhments of her mind no wiſe inferior to her exterior graces, he even entertained the deſign of raiſing her to the throne; and was the more confirmed in this reſolution, when he found that her virtue and modeſty prevented all hopes of his gratifying his paſſion in any other manner *.

The buſineſs of the divorce promiſed ſoon to be determined in favour of Henry; but his impatience received a ſhock which he little expected, and at which he was much

* Camden. Intro. p. 1. Hume, vol. 4, p. 78, 79.

chagrined.

chagrined. Campeggio, who was an Italian, and acted as president, on a sudden, without any warning, and under the pretence that they sat as a part of the consistory of Rome, by whose rules they were to be governed, prorogued the court to the first of October; and an evocation, which came in a few days after from Rome, put an end to all the hopes of success, which the king had so long and so anxiously cherished *.

Henry, seeing no end to the delays which he experienced from the intrigues of the Pope, and other foreign powers, and being resolved to brave all consequences, he privately celebrated his marriage with Ann Boleyn, (November 14, 1532 †,) whom he had previously created Marchioness of Pembroke.—By this time the king had received the favourable opinions of several foreign universities in regard to the divorce, as well as those of his own realm, which being strengthened by the judgment of the convocations of Can-

* Burnet's Reform, vol. 1. p. 76, 77.

† Camden. Intro. p. 4. Burnet's Reform. vol. 1. p. 126. Hume, vol. 4, p. 111.

terbury and York, who had, two years before, pronounced his marriage with Catherine "invalid, irregular, and contrary to the law of God;" Cranmer, who had lately been created Archbiſhop of Canterbury, was therefore authorized to cite the queen to appear before his court, for examining the validity of her marriage; but, as ſhe made no anſwer to the citation, either by herſelf or proxy, he pronounced her marriage with the king as unlawful and invalid. By a ſubſequent ſentence, he ratified the marriage with Ann Boleyn, who ſoon after was publicly crowned queen, with all the pomp and dignity ſuited to that ceremony. To complete the king's ſatisfaction, on the concluſion of this intricate and vexatious affair, ſhe was ſafely delivered of a daughter, who received the name of Elizabeth, and who afterwards ſwayed the ſceptre with infinite renown. Henry was ſo much delighted with the birth of this child, that ſoon after he conferred on her the title of Princeſs of Wales; though gentlemen of the long robe conſidered this to be illegal, inaſmuch as ſhe could *only* be *heir preſumptive*, but

but not *apparent*, to the crown, ſince a ſon coming after, would be entitled to the ſucceſſion. But he had, during his former marriage, thought proper to honour his daughter Mary with that title; and he was reſolved to beſtow, on the offspring of his preſent marriage, the ſame mark of diſtinction, as well as to exclude the elder princeſs of all hopes of ſitting upon the throne *.

On the fifteenth day of January, 1534, Henry aſſembled a parliament, which entirely concurred with him in his views of rooting out for ever the ſupremacy of the pope in England; and the affair of the divorce of Queen Catherine, which Pope Clement had precipitately pronounced invalid, haſtened the final overthrow of papal authority. During this ſeſſion, a biſhop preached every Sunday at Paul's-croſs, and declared to the people, that the Pope had no authority at all in the kingdom †.

* Cambden. Int. p. 4. Burnet's Reform. vol. 1, p. 131, 134. Hume, vol. 4. p. 103, 113. Rapin, vol. 1. p. 798, 799.

† Burnet, vol. 1, p. 144.

The

The king's marriage with Ann Boleyn, and his divorce from Catherine, who was from thenceforth only to be treated as dowager to Prince Arthur, was productive of a moſt important law this ſeſſion, which regulated the ſucceſſion to the crown. The marriage between the king and Catherine was thereby adjudged void, and the ſeparation good: the primate's ſentence annulling it was confirmed; and the marriage of the king with Ann Boleyn was declared to be conſonant to God's law. It was further enacted, that the iſſue of this marriage ſhould be conſidered as the king's lawful children, and that the crown ſhould deſcend to ſuch iſſue, and failing them to the king's heirs for ever; to the excluſion of Mary, the daughter of Queen Catherine, and in default of male iſſue, the crown was declared to devolve to the Lady Elizabeth, and her heirs; that for default thereof, then to the ſecond iſſue female and her heirs, and ſo from iſſue female to iſſue female, and their reſpective heirs, in due courſe of inheritance. It was declared to be miſpriſon of treaſon to publiſh any thing to the peril of the king, to the

the ſlander of his marriage, or to the diſinheritance of his iſſue; and an oath was enjoined to be taken by all perſons to bind them to reſpect this order of ſucceſſion, under the penalty of being declared guilty of miſpriſon of treaſon, and of forfeiture of their lands, goods and chattels *.

The convocation, which ſat at this time, was equally compliant with the parliament in promoting all the projects of the king.—They ordered that the act of parliament, which had been formerly made againſt appeals to Rome †, together with the king's appeal to a general council, ſhould be affixed to the doors of all the churches in the kingdom; and they voted that the pope had, by the law of God, no more juriſdiction in England than any other foreign biſhop; and that the authority, which he and his predeceſſors had there exerciſed, was only by uſurpation, and by the ſufferance of Engliſh princes. Four perſons alone oppoſed this vote in the lower houſe, and one doubt-

* 25 Henry VIII. chap. 20.

† 24 and 25 Henry VIII. c. 12, c. 19, cl. 3, 4, 5, 6.

ed.

ed. It paſſed unanimouſly in the upper.—The biſhops went ſo far in their complaiſance, that they took out new commiſſions from the crown, in which all their ſpiritual and epiſcopal authority was expreſsly affirmed to be derived ultimately from the civil magiſtrate, and to be entirely dependent on his good pleaſure *.

On the 3d day of November the Parliament was again aſſembled; and (like a vile inſtrument contrived for the purpoſe of enlarging regal authority) they proceeded to confer on the king the title of the *only ſupreme head on earth of the church of England*, which was in fact inveſting him with all the real power belonging to it. In this memorable act, the parliament acknowledged his inherent power, "To viſit, repreſs, redreſs, reform, order, correct, reſtrain, and amend all ſuch errors, hereſies, abuſes, contempts and enormities, which fell under any ſpiritual authority or juriſdiction †."

* Hume, vol. 4, p. 119.

† 26 Henry VIII. c. 1. Repealed by the 1 and 2 Philip and Mary, c. 8. and revived by 1 Eliz. c. 1.

Not

Not long after this tranſaction, the wavering affections of Henry were again ſubdued by the ſingular beauty of the Lady Jane Seymour, one of the maids of honour to the queen; and he was determined to ſacrifice every thing to the gratification of this new appetite. Ann's enemies ſoon perceived the fatal change; and they were forward to widen the breach, when they found that they incurred no danger by interpoſing in thoſe delicate concerns. She had been delivered of a dead ſon *; and Henry's extreme fondneſs for male iſſue being thus, for the preſent, diſappointed, his temper equally violent and ſuperſtitious, was diſpoſed to make the innocent mother anſwerable for the misfortune.

Ann, who had been educated in France, was of a gay and chearful temper, which was not always confined within the rules of ſtrict decency and diſcretion. She had rallied ſome of the king's ſervants with greater freedom than became her dignity. The Viſ-

* Camden. Intro. p. 4. Burnet, vol. 1. p. 196.

counteſs of Rochford was jealous of her lord, who was brother to the queen; and being a ſpiteful woman of no ſort of virtue (as afterwards appeared by her ſerving queen Catherine Howard in her carnal practices, for which ſhe was attainted and executed) ſhe carried many ſtories to the king, tending to create a ſuſpicion that there ſubſiſted a connection between them, beyond what ought naturally to be permitted. But when this matter came to be enquired into, it only amounted to this—that he was once ſeen leaning upon his ſiſter's bed, before ſome company. Henry Norris, who was groom of the ſtole, Weſton and Brereton, who were of the king's privy chamber, and one Mark Smeton, a muſician, were all obſerved to poſſeſs much of her favour; and their zeal in ſerving her, was thought too warm and diligent, to flow from a leſs active principle than love. Theſe, and many other circumſtances, were brought to the ears of the king, which increaſed his diſlike to the queen, and together with his affection to Lady Jane Seymour, made him conclude her guilty.

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The king's ſuſpicions firſt appeared openly, on the firſt of May, in a tilting at Greenwich, where ſhe happened to drop her handkerchief; and this circumſtance haſtened the ruin of the hapleſs queen. Henry interpreted this incident, which was probably caſual, into a proof of gallantry to ſome of her paramours. He retired from the place in a tranſport of fury; he ſent orders to confine her to her chamber; arreſted Norris, Brereton, Weſton and Smeton, together with her brother, Rochford, and threw them into priſon. This was a dreadful ſhock to the poor queen, who, when ſhe had recovered from the ſurpriſe into which it had thrown her, ſmiled, and ſaid ſhe thought it was only a device of the king to try her. But when ſhe perceived it was in earneſt, ſhe deſired to have the ſacrament in her cloſet—expreſſed great devotion, and ſeemed to be prepared to meet her melancholy fate.—Next day ſhe was ſent to the Tower, and ſome lords meeting her on the river, declared to her the nature of her offences, of which ſhe had hitherto been ignorant. She made deep proteſtations of her innocence,

and begged in vain to ſpeak with the king. When ſhe was carried into the Tower, "ſhe fell down on her knees, and prayed God to help her, as ſhe was not guilty of the thing for which ſhe was accuſed." Her ſurpriſe and confuſion had thrown her into hyſterical fits; and in that ſituation, ſhe revealed ſome indiſcretions and levities, which her ſimplicity had equally betrayed her to commit and to avow *.

She declared, as ſaid in a letter writ about her to the court, "that ſhe had once aſked Norris why he did not go on with his marriage?" who anſwered her, "that he would yet tarry ſome time." To which ſhe replied, "You look for dead men's ſhoes; for if ought come to the king but good, you would look to have me." He anſwered, "if he had any ſuch thought, he would his head were cut off." Upon which ſhe ſaid, "ſhe could undo him if ſhe pleaſed," and thereupon ſhe fell out with him. As for Mark, who was then laid in irons, ſhe ſaid, "he was never in her chamber, but when the king was laſt at Wincheſter; and then he came

* Lord Herbert, p. 445, 446. Burnet, vol. 1, p. 198.

in

in to play on the virginals." She ſaid, "that ſhe never ſpoke to him after that, but on Saturday before May day, when ſhe ſaw him ſtanding in the window, and then ſhe aſked him, why he was ſo ſad;" he ſaid, "it was no matter." She anſwered, "you may not look to have me ſpeak to you, as if you were a nobleman, ſince you are an inferior perſon." "No, no, Madam," ſaid he, "a look ſufficeth me." She ſeemed more apprehenſive of Weſton than of any body; for, on Whitſun-Monday laſt, he ſaid to her, "that Norris came more to her chamber upon her account, than for any body elſe that was there." She had obſerved that he loved a kinſwoman of her's, and challenged him for it, and for not loving his wife. But he anſwered her, "that there were women in the houſe whom he loved better than them both;" ſhe aſked, "who is that?" "Yourſelf," ſaid he; upon which ſhe ſaid, "ſhe defied him." But Henry, inſtead of being ſatisfied with the candour and ſincerity of her confeſſion, regarded thoſe indiſcretions only as preludes to a criminal intimacy. Of all thoſe multitudes, whom the

the beneficence of the queen's temper had obliged, during her proſperous fortune, no one durſt interpoſe between her and the king's fury; and the perſon, whoſe advancement every breath had favoured, and every countenance had ſmiled upon, was now left neglected and abandoned, Cranmer alone excepted, who, having profited by her kindneſs, and imbibed ſtrong prepoſſeſſions of her worth and virtues, endeavoured, as far as the king's impetuoſity would permit him, to moderate and remove the violent prejudices entertained againſt her *.

The queen herſelf wrote Henry a letter from the Tower, full of the moſt tender expoſtulations, and of the warmeſt proteſtations of her innocence †. This letter had no influ-

* Burnet, vol. 1. p. 198, 199. Hume, vol. 4. p. 156, 157. Rap. vol. 1. p, 810.

† In this letter, ſhe pleads her innocence with ſo much eloquence, and in a ſtile ſo moving, that we cannot forbear to inſert it, for the ſake of thoſe into whoſe hands this book may fall, who have not ſeen it before:—

" Sir,

influence on the unrelenting mind of Henry, who was determined to pave the way for his new

" Sir,

" YOUR Grace's diſpleaſure, and my impriſonment, are things ſo ſtrange unto me, as what to write, or what to excuſe, I am altogether ignorant. Whereas you ſend unto me, (willing me to confeſs a truth, and ſo obtain your favour) by ſuch an one whom you know to be mine ancient profeſſed enemy. I no ſooner received this meſſage by him, than I rightly conceived your meaning; and as if, as you ſay, confeſſing a truth indeed may procure my ſafety, I ſhall, with all willingneſs and duty, perform your command.

" But let not your Grace ever imagine, that your poor wife will ever be brought to acknowledge a fault, where not ſo much as a thought thereof ever preceded. And to ſpeak a truth, never prince had wife more loyal in all duty, and in all true affection, than you have ever found in Ann Boleyn, with which name and place I could willingly have contented myſelf, if God, and your Grace's pleaſure, had ſo been pleaſed. Neither did I, at any time, ſo far forget myſelf in my exaltation, or received queenſhip, but that I always looked for ſuch an alteration as now I find; for the ground of my preferment being on no ſurer foundation than your Grace's fancy, the leaſt alteration, I knew, was fit and ſufficient to draw that fancy to ſome other ſubject. You have choſen me, from a low eſtate, to be your queen and companion, far beyond my deſert or deſire. If then you have found me worthy of ſuch honour, good your Grace, let not any light fancy, or bad counſel of mine enemies,

new marriage, by her death. Norris, Weſton, Brereton, and Smeton, were tried, but no

enemies, withdraw your princely favour from me; neither let that ſtain, that unworthy ſtain of a diſloyal heart towards your good Grace, ever caſt ſo foul a blot on your moſt dutiful wife, and the infant princeſs your daughter: try me, good king, but let me have a lawful trial, and let not my ſworn enemies ſit as my accuſers and judges; yea, let me receive an open trial, for my truth ſhall fear no open ſhame; then ſhall you ſee, either mine innocency cleared, your ſuſpicion and conſcience ſatisfied, the ignominy and ſlander of the world ſtopped, or my guilt openly declared. So that, whatſoever God or you may determine of me, your Grace may be freed from an open cenſure; and mine offence being ſo lawfully proved, your Grace is at liberty, both before God and man, not only to execute worthy puniſhment on me as an unlawful wife, but to follow your affection, *already ſettled, on that party*, for whoſe ſake I am now as I am, whoſe name I could ſome good while ſince have pointed unto, your Grace being not ignorant of my ſuſpicion therein.

"But if you have already determined of me, and that not only my death, but an infamous ſlander muſt bring you the enjoying of your deſired happineſs, then I deſire of God, that he will pardon your great ſin therein, and likewiſe mine enemies, the inſtruments thereof: and that he will not call you to a ſtrict account, for your unprincely and cruel uſage of me, at his general judgment ſeat, where both you and myſelf muſt ſhortly appear, and in whoſe judgment I doubt not (whatſoever the world may think of me) mine innocence ſhall be openly known, and ſufficiently

no legal evidence was produced againſt them. The chief proof of their guilt conſiſted in a hearſay from one Lady Wingfield, who was dead. Smeton was prevailed on, by the vain hopes of life, to confeſs a criminal correſpondence with the queen; but even her enemies expected little advantage from his confeſſion. For, they never dared to confront him with her; and he was immediately put to death, as were alſo Brereton and Weſton. Norris had been much in the king's favour, who made him

ently cleared. My laſt and only requeſt ſhall be, that myſelf may only bear the burthen of your Grace's diſpleaſure, and that it may not touch the innocent ſouls of thoſe poor gentlemen, who, (as I underſtand) are likewiſe in ſtrait impriſonment for my ſake. If ever I have found favour in your ſight, if ever the name of Ann Boleyn hath been pleaſing in your ears, then let me obtain this requeſt; and I will ſo leave to trouble your Grace any further, with mine earneſt prayers to the Trinity, to have your Grace in his good keeping, and to direct you in all your actions.—From my doleful priſon in the Tower, this 6th of May.

Your moſt loyal and ever faithful wife.

ANN BOLEYN."

Lord Herbert, p. 448. Burnet, vol. 1, p. 154, in the Collection of Records.

an offer of life, provided he would confeſs his crime, and criminate the queen: but he generouſly diſdained the propoſal, ſaying, that in his conſcience he believed her entirely innocent, and that he would rather die a thouſand deaths, than calumniate an innocent perſon *.

The unhappy and forſaken queen was, by an unheard of preſident, brought to the bar, and indicted of high treaſon; and being tried by a prejudiced jury of peers, who receiving ſuſpicions as proofs, baſely declared her guilty. The crimes laid to her charge were, "That ſhe had procured her brother and the other four to lie with her, which they had done often; that ſhe had ſaid to them, that the king never had her heart; and to each of them apart, that ſhe loved them better than any perſon whatever; which was to the ſlander of the iſſue begotten between the king and her." By this ſtrained interpretation, her guilt was brought under the ſtatute of the 25th of this reign;

* Burnet, vol. 1. p. 205. Hume, vol. 4. p. 158. Rap. vol. 1. p. 811.

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in which it was declared criminal to throw any ſlander upon the king, queen, or their iſſue; ſo that the law which was made for her, and the iſſue of their marriage, was now turned to her deſtruction *. Such palpable abſurdities were at that time admitted, and even regarded by the peers of England, as a ſufficient reaſon for ſacrificing an innocent queen to the cruelty of their tyrant!—Though unaſſiſted by counſel, ſhe defended herſelf with preſence of mind; and the audience could not help pronouncing her innocent, and declaring, that ſhe had fallen a victim to circumvention. Judgment, however, was given by the court, both againſt the queen and her brother, Lord Rochford; and her verdict contained, that ſhe ſhould be burned or beheaded, at the king's pleaſure. When this dreadful ſentence was pronounced, ſhe was not diſmayed, but liſting up her hands to heaven, ſaid, "O, Father! O, Creator! thou who art the way, the truth, and the life, thou knoweſt that I have

* Camd. p. 4. Burnet, vol. 1. p. 202. Hume, vol. 4. p. 159.

not deſerved this fate." And then turning to the judges, made the moſt pathetic proteſtations of her innocence *. Henry, not yet ſatisfied with this cruel vengeance, was determined entirely to annul his marriage with the condemned queen, and to declare her iſſue illegitimate. Under the terrors of her melancholy ſituation, he cauſed her to be brought from her priſon to Lambeth; where, ſhe was made to confeſs a pre-contract with Lord Percy, though that nobleman made the moſt ſolemn proteſtations that there never was any formal promiſe of marriage between them. Upon this extorted confeſſion, however, the afflicted Cranmer, who ſat as judge, was in a manner compelled to paſs a ſentence of divorce between the king and her, and to declare their daughter Elizabeth illegitimate †.

The unfortunate queen was beheaded on Tower-hill, on the 19th of May, 1536, by the executioner of Calais, who was brought

* Hume, vol. 4. p. 159, 160.

† Camden, Intro. p. 4. Burnet, vol. 1. p. 203. Hume, vol. 4. p. 160. Rapin, vol. 1. p. 811.

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over as more expert in the work of decapitation, than any one in England. Her body ſuffered the indignity of being careleſsly thrown into a cheſt of elm-tree, made to hold arrows, and before twelve o'clock of the ſame day, was buried in the chapel within the Tower; her remains being thought by this ſuperlative tyrant, as unworthy of repoſing in the ſepulchre of kings *.

The innocence of this unhappy queen cannot reaſonably be called in queſtion.—Henry himſelf, in the violence of his rage, knew not whom to fix upon as her lover; and though he charged her brother, and four other perſons, as criminally intimate with her, he was not able to bring proof againſt any of them. The whole tenour of her conduct forbids us to aſcribe to her an abandoned character, ſuch as is implied in the king's accuſation. Had ſhe been ſo loſt to all prudence and ſenſe of ſhame, ſhe muſt have expoſed herſelf to detection, and af-

* Lord Herbert, p. 449. Burnet, vol. 1. p. 205.

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forded her enemies ſome evidence againſt her. But the king made the moſt effectual apology for her, and laid open the true cauſe of her deſtruction, by marrying Jane Seymour, the day after her execution *; and he had the *pleaſure* to proceed to the conſummation of his nuptials, while her body yet lay bleeding in its ſhroud. His impatience to gratify this new paſſion cauſed him to forget all regard to decency; and his cruel heart was not ſoftened a moment by the bloody cataſtrophe of a lady who had ſo long been the object of his moſt tender affections.

The new queen, however, had the good fortune, of all Henry's ſeven wives, to gain the moſt on his affections and eſteem; and was happy in one thing, that ſhe did not ſurvive his liking, otherwiſe, it is probable, ſhe might have had as tragical a downfal as her predeceſſor. But ſhe ſeaſonably died in child-bed, after being delivered of Prince

* Camden, Intro. p. 4. Burnet, vol. 1. p. 207.

Edward,

Edward, who was cut out of her womb, and ſucceeded his father in the kingdom*.

Henry, on the 8th of June, aſſembled a parliament, which he found, as uſual, entirely ſubſervient to his will, and ready to go any length to gratify even his moſt lawleſs paſſions. They made an act, by which his divorce from Ann Boleyn was ratified; that queen, and all her accomplices, were attainted; the iſſue of both his former marriages were declared illegitimate, and it was even made treaſon to aſſert the legitimacy of either of them; to throw any ſlander upon the preſent king, queen, or their iſſue, was ſubjected to the ſame penalty; the crown was ſettled on the king's iſſue by Jane Seymour, or any ſubſequent wife; and in caſe he ſhould die without children, he was empowered, *by his will, or letters patent, to diſpoſe of the crown:* an enormous authority, eſpecially when entruſted to a prince ſo violent and capricious in his humour.—Whoever refuſed to anſwer upon oath to

* Camden, p. 4.

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any article of this ſettlement, was declared to be guilty of treaſon; and by this clauſe, a ſpecies of political inquiſition was eſtabliſhed in the kingdom, as well as the accuſations of treaſon multiplied to an unreaſonable degree. The king was alſo authorized to confer on any one, by his *will or letters patent*, any caſtles, honours, liberties or franchiſes; words which might have been extended to the diſmembering of the kingdom, by the erection of principalities and independent juriſdictions. Another acceſſion was likewiſe gained to the authority of the crown. The king, or any of his ſucceſſors, was empowered to repeal or annul, by letters patent, any act of parliament which had been paſſed before he was four and twenty years of age *.

It was the unhappy fate of the Engliſh, during this reign, that when they laboured under any grievance, they had not the leaſt proſpect of expecting redreſs from parliament.

* 28 Henry VIII. c. 7. See alſo 35 Henry VIII. c. 1. Lord Herbert, p. 621, 622, 623. Burnet, vol. 1. p. 210, 212. Rap. vol. 1. p. 812. Hume, vol. 4. p. 163, 164.

ment. On the contrary, they had reaſon to dread each meeting of that aſſembly, and were then ſure of having tyranny converted into law, and aggravated, perhaps, with ſome circumſtance which the arbitrary prince and his miniſters had not hitherto deviſed, or did not think proper, of themſelves, to carry into execution.

This abject ſervility never appeared more conſpicuouſly, than in a new parliament, which the king aſſembled on the 28th of April, 1538, and which, if he had been ſo pleaſed, might have been the laſt that ever ſat in England, at leaſt during his reign. But he found them too uſeful inſtruments of dominion, ever to entertain thoughts of giving them a total excluſion.

The chancellor opened the parliament by informing the houſe of lords, that it was his Majeſty's earneſt deſire to extirpate from his kingdom all diverſity of opinion in matters of religion; and as this undertaking was, he owned, important and arduous, he deſired them to chuſe a committee from

among themſelves, who might draw up certain articles of faith, and communicate them afterwards to the parliament. The lords named Cromwell, whom the king had lately created vicegerent general in eccleſiaſtical affairs, the archbiſhops of Canterbury and York, the biſhops of Durham, Carliſle, Worceſter, Bath and Wells, Bangor and Ely.—Even this ſmall committee was agitated with ſuch diverſity of opinion, that it could come to no concluſion; ſo difficult a taſk it is to regulate men's conſciences, in matters of religion!

At length, however, an act was framed, limiting the articles to ſix, which, having paſſed both houſes, received the royal aſſent. By this law, which the Proteſtants juſtly termed the *Bloody Bill*, the doctrine of the *real* preſence was eſtabliſhed;—the communion in one kind—the perpetual obligation of vows of chaſtity—the utility of private maſſes—the celibacy of the clergy—and the neceſſity of auricular confeſſion.

The

The denial of the firſt article, reſpecting the real preſence, ſubjected the perſon to death by fire, and to the ſame forfeiture as in caſes of treaſon; and admitted not of the privilege of abjuring; an unheard of ſeverity, and unknown to the inquiſition itſelf. The denial of any of the other five articles, even though recanted, was puniſhable by the forfeiture of goods and chattles, and impriſonment during the king's pleaſure.—An obſtinate adherence to error, or a relapſe, was adjudged to be felony, and puniſhable with death. The marriage of prieſts was ſubjected to the ſame puniſhment.—Their commerce with women was, on the firſt offence, forfeiture and impriſonment; on the ſecond, death. The abſtaining from confeſſion, and from receiving the euchariſt at the accuſtomed times, ſubjected the perſon to fine, and to impriſonment during the king's pleaſure; and if the criminal perſevered after conviction, he was puniſhable by death and forfeiture, as in caſes of felony *. To carry this act into execution,

* 31 Henry VIII. c. 14. 32 Henry VIII. c. 19. 38 Hen. VIII. c. 5. Rep. 1. Ed. VI. c. 12. 1 Eliz. c. 1. ſ. 18.

commiſſioners were appointed by the king, in the ſeveral ſhires, to enquire into theſe hereſies, and irregular practices, and to proceed againſt the criminals, upon preſentments, and trial by jury *.

The king, in framing this law, ſtretched his oppreſſive hand againſt both parties in religion; and even the Catholics had reaſon to complain, that the friars and nuns, though diſmiſſed their convent, ſhould be capriciouſly reſtrained to the practice of celibacy; but as the Proteſtants were chiefly expoſed to the ſeverity of the ſtatute, the miſery of adverſaries, according to the uſual maxims of party, was regarded by the adherents to the ancient religion as their own proſperity and triumph. Cranmer, however, had the courage three days to oppoſe this bill in parliament; and though the king deſired him not to go to the houſe, ſince he could not give his aſſent to it, he humbly excuſed himſelf, as he thought he was bound in conſcience to vote againſt it.

* Burnet, vol. 1, p. 259.

Henry

Henry was accuſtomed to Cranmer's freedom and ſincerity, and being convinced of the general rectitude of his intentions, he was diſpoſed to allow him a greater latitude in his ſpeeches, than any other man in his dominions. But that part of the act which enjoined the celibacy of the clergy, touched the worthy primate to the quick. He had been married ſome years before to a kinſwoman of Hoſiander, a famous divine of Nuremberg, whom, as ſoon as the bill had received the ſeal of public authority, he, with a grieved heart, diſmiſſed, and ſent away into Germany. But the Biſhops Latimer and Shaxton, viewing this law through a conſcientious medium, threw up their biſhoprics, and were committed to the Tower*.

The parliament, having thus reſigned all their religious liberties, proceeded to an entire ſurrender of their civil; and their puſillanimity was ſuch, that, without ſcruple or deliberation, they made, by one act, a total

* Lord Herbert, p. 511, 512. Burnet, vol. 1. p. 259, 260, 266. Rap. vol. 1. p. 821, 822. Hume, vol. 4. p. 194, 195.

ſubver-

ſubverſion of the Engliſh conſtitution.—They gave to the king's proclamation the ſame force as to a ſtatute enacted by parliament; and to render the matter worſe, if poſſible, they framed this law as if it were only declaratory, and had for its object the explanation of the natural extent of royal authority. The preamble of this diſgraceful act contains, that the king had formerly ſet forth ſeveral proclamations which diſobedient perſons contemned, not conſidering what a king by his royal power may do; that this licence might encourage offenders not only to diſobey the laws of Almighty God, but alſo to diſhonour the king's moſt royal majeſty, *who may full ill bear it;* that ſudden emergencies often occur, which require ſpeedy remedies, and cannot await the ſlow aſſembling and deliberations of parliament; and that though the king was empowered by his authority, *derived from God,* (like that of Moſes in the Mount) to conſult the public good on theſe occaſions, yet the oppoſition of refractory ſubjects might puſh him to extremity and violence.—It was therefore enacted, "That the king for the time

time being, with the advice of his council, or the more part of them, may ſet forth proclamations, under ſuch penalties and pains as to him and them ſhall ſeem neceſſary, which ſhall be obſerved as though they were made by act of parliament; but this ſhall not be prejudicial to any perſon's inheritance, offices, liberties, goods, chattles, or life; and whoſoever ſhall willingly offend any article contained in the ſaid proclamation, ſhall pay ſuch forfeitures, or be ſo long impriſoned as ſhall be expreſſed in the ſaid proclamation; and if any offending will depart the realm, to the intent he will not anſwer his ſaid offence, he ſhall be adjudged a traitor *."

What proves either a ſtupid or wilful blindneſs in the parliament, is, that they pretended, even after this ſtatute, to maintain ſome limitations in the government; but they did not conſider, that no penalty could be inflicted on the diſobeying of pro-

* 31 Hen. VIII. chap. viii. exp. 34 Henry VIII. c. 23. rep. by 1 Ed. VI. c. 12.

clamations,

clamations, without invading ſome liberty or property of the ſubject; and that the power of enacting new laws, joined to the diſpenſing power then exerciſed by the crown, amounted to a full legiſlative authority. It is true, the kings of England had always been accuſtomed, from their own authority, to iſſue proclamations, and to exact obedience to them; and this prerogative was, no doubt, a ſtrong ſymptom of abſolute government: but ſtill there was a difference between a power which was exerciſed on a particular emergence, and which muſt be juſtified by the preſent expedience or neceſſity, and an authority conferred by a poſitive ſtatute, which could no longer admit of controul or limitation.

Could any act be more oppoſite to the ſpirit of liberty, than this law, it would have been another of the ſame parliament. They paſſed an act of attainder, not only againſt the Marquis of Exeter, the Lords Montacute, Darcy, Huſſey, and others, who had been legally tried and condemned, but alſo againſt ſome perſons of the higheſt quality,

lity, who had never been accuſed, examined or convicted. The violent hatred which Henry bore to Cardinal Pole, who was the fourth ſon of the Counteſs of Saliſbury, daughter of the Duke of Clarence, on account of his writing a book, in which he inveighed againſt the king's ſupremacy, his divorce, and ſecond marriage, extended itſelf to all his friends and relations; and the Counteſs his mother in particular, had therefore become extremely obnoxious to him.—She was accuſed of having employed her authority among her tenants to hinder them from reading the new tranſlation of the Bible, or any other new book the king had privileged; of having procured bulls from Rome, and of having kept a correſpondence with her ſon the Cardinal *. But Henry found, either that theſe offences could not be proved, or that they would not by law extend to the full gratification of his vengeance. He was reſolved, therefore, to proceed in a more ſummary and more tyrannical manner; and for that purpoſe he ſent

* Lord Herbert, p. 511.

Cromwell, who was but too obſequious to his will, to aſk the Judges whether the Parliament could attaint a perſon who was forthcoming, without giving him any trial, or citing him to appear before them? The Judges replied, that it was a dangerous queſtion; that equity, juſtice, and every idea of law, required that the accuſed ſhould have a fair trial, and be heard in their own defence; that however the parliament, being the ſupreme court of the realm, from which there could be no appeal, the validity of their ſentences, of what nature ſoever they were, could not be called in queſtion. This was ſaying, in other words, that the parliament would by ſo acting commit an injuſtice, for which they could not be brought to an account *.

Henry learned by this opinion, that ſuch a method of proceeding, though directly contrary to all the principles of equity, and by which the moſt innocent perſon in the world might be ruined, was yet practicable;

* Burnet, vol. i. p. 264. Rap. vol. i. p. 822. Hume, vol. 4. p. 198.

and

and this being all he was anxious to know, he was reſolved to employ it againſt the Counteſs of Saliſbury. Cromwell ſhewed the houſe of peers a banner, on which were embroidered the five wounds of Chriſt, the ſymbol choſen by a body of inſurgents in the North, who had riſen againſt the government on account of the diſſolution of the monaſteries, which Henry brought about in order to fill his coffers with money. This banner he affirmed was found in the Counteſs's houſe. No other proof ſeems to have been produced to aſcertain her guilt. The parliament however, without further inquiry, paſſed a bill of attainder againſt her, in which they included, without any better proof, as far as appears, the Marchioneſs of Exeter, Sir Adrian Forteſcue, and Sir Thomas Dingley. Theſe two gentlemen were executed. The Marchioneſs was pardoned; but a different fate awaited the old Counteſs of Saliſbury, whom Henry had for the preſent thought fit to reprieve *.

* Rap. vol. 1. p. 882. Hume, vol. 4. p. 198.

The king's councils being now (1540) directed by the Duke of Norfolk and Gardiner biſhop of Wincheſter, a furious perſecution commenced againſt the Proteſtants; and the law of the Six Articles was executed with extreme rigour. One Dr. Barnes, who had occaſioned the execution of Lambert a ſchoolmaſter, merely becauſe in their common departure from the ancient faith he had dared to go one ſtep further than himſelf, now felt in his turn the ſeverity of perſecution. For, by a bill which paſſed in parliament, he was, without trial, condemned to the flames, together with two others, named Jerome and Gerrard, who had been among the earlieſt converts to Martin Luther's doctrine. He diſcuſſed theological queſtions even at the ſtake; and as the diſpute between him and the ſheriff turned upon the invocation of ſaints, he ſaid, that he doubted whether the ſaints could pray for us; but if they could, he hoped, in half an hour, to be praying for the ſheriff and all the ſpectators. He next entreated the ſheriff to carry to the king his dying requeſt, which he fondly imagined would have authority

thority with that monarch, who had ſent him to the ſtake. The purport of his requeſt was, that Henry, beſides cruſhing ſuperſtitious ceremonies, ſhould be extremely vigilant in preventing fornication and common ſwearing.

While Henry was exerting this violence againſt the Proteſtants, he ſpared not the Catholics who denied his ſupremacy; and a foreigner, at that time in England, had reaſon to ſay, that thoſe who were againſt the pope were burned, and thoſe who were for him were hanged. The king even diſplayed, in an oſtentatious manner, this tyrannical impartiality, which reduced both parties to ſubjection, and infuſed terror into every breaſt. Barnes, Gerrard and Jerome, had been carried to the place of execution on three hurdles; and along with them there was placed on each hurdle a Catholic, who was alſo executed for his religion. Theſe Catholics were Abel, Fetherſtone, and Powell, who declared, that the moſt grievous part of their puniſhment was the being coupled

pled with ſuch heretical miſcreants as ſuffered with them *.

But though the ſpirit of the Engliſh ſeemed to be totally ſunk under the deſpotic power of Henry, there appeared ſome ſymptoms of diſcontent. An inconſiderable rebellion broke out in Yorkſhire, headed by Sir John Nevill; but it was ſoon ſuppreſſed, and Nevill, with other ringleaders, was executed. The rebels were ſuppoſed to have been inſtigated by the intrigues of Cardinal Pole; and the king was inſtantly determined to make the Counteſs of Saliſbury, who lay under ſentence of death, ſuffer for her ſon's offences. He ordered her to be carried to execution; and this venerable matron maintained ſtill, in theſe diſtreſsful circumſtances, the ſpirit of that long race of monarchs, from whoſe loins ſhe was deſcended. Her magnanimity forſook her not on this awful occaſion, and ſtruck the ſpectators with aſtoniſhment. She refuſed to lay her head on the block, or ſubmit to

* Burnet, vol. 1. p. 298, 299. Rap. vol. 1. p. 828. Hume, vol. 4. p. 212.

a ſen-

a ſentence where ſhe had received no trial; ſaying, "So ſhould traitors do, and I am none." Animated beyond the fear of death, ſhe told the executioner, "that, if he would have her head, he muſt win it the beſt way he could." And thus ſhaking her venerable grey locks, ſhe ran about the ſcaffold; while the executioner followed her with his axe, aiming many fruitleſs blows at her neck, before he was able to give the fatal ſtroke.—Thus periſhed the laſt of the line of Plantagenet, which, with great glory, but ſtill greater crimes and misfortunes, had governed England for the ſpace of three hundred years *.

From this period, the reign of Henry grew more and more troubleſome, which was ſtill increaſed by the violence and cruelty of his temper; while the ſpirit of perſecution continued to rage with unforgiving fury. Towards the end of his reign, he became ſo unwieldy with corpulency, that he could not get up and down ſtairs, but as

* Lord Herbert, p. 532. Burnet, vol. 1. p. 362. Hume, vol. 4. p. 213.

he

he was raiſed or let down by an engine; and his illneſs made him ſo froward, that no one durſt inform him of the danger of his condition; eſpecially as ſome perſons, during this reign, had ſuffered as traitors for foretelling the king's death; ſo that every one was afraid, leſt, in the tranſports of his anger, he might, on this pretence, puniſh capitally the author of ſuch friendly intelligence. At laſt the dreadful ſecret was imparted to him by Sir Anthony Denny, who exhorted him to prepare for the fate which was awaiting him; and he ſoon after expired in the fifty-ſixth year of his age, after a reign of thirty-ſeven years and nine months *, leaving behind him the character of the greateſt tyrant and crueleſt man that ever ſat upon the throne of England. By his will, which is of a piece with the contrarieties of his diſpoſition and conduct, he left money for maſſes to be ſaid for delivering his ſoul from purgatory; and though he deſtroyed all thoſe inſtitutions eſtabliſhed by his anceſtors and others, for the benefit of their ſouls, and had even left the doctrine

* Burnet, vol. 1. p. 350. Rap. vol. 1. p. 849.

of

of purgatory doubtful in all the articles of faith, which he promulgated during his later years, he was ſo determined when the hour of death was approaching, to take care, at leaſt, *of his own future repoſe*, and to adhere to the ſafer ſide of the queſtion *.

There were ten parliaments ſummoned by Henry VIII. and twenty-three ſeſſions held. The whole time in which theſe parliaments ſat, during this long reign, exceeded not three years and a half. It amounted not to a twelvemonth during the firſt twenty years †. The innovations in religion obliged the king to call theſe aſſemblies more frequently. But though theſe were the moſt important tranſactions that ever fell under the cognizance of parliament, their abject ſubmiſſion to Henry's will, added to their earneſt deſire of ſoon returning to their country ſeats, produced a quick diſpatch of the bills, and made the ſeſſions of ſhort

* Hume, vol. 4, p. 266.

† Ibid. 268.

duration *. All the king's caprices were, indeed, blindly complied with, and no regard was paid to the ſafety or liberty of the ſubject. Beſides the violent proſecution of whatever he was pleaſed to term hereſy, he cauſed to be erected a ſyſtem of new-fangled treaſons, which before this time were unknown to the conſtitution. Among theſe we reckon the offences of wilful poiſoning †; execrations againſt the king, and calling him opprobrious names by public writing ‡;

* The parliament was ſo little jealous of its privileges, which indeed were, at that time, ſcarcely worth preſerving, that there is an inſtance of one Richard Strode, who, becauſe he had introduced into the lower houſe ſome bill regarding tin, was ſeverely treated by the Stannery courts in Cornwall. Heavy fines were impoſed on him; and upon his refuſal to pay, he was thrown into a dungeon, loaded with irons, and uſed in ſuch a manner as brought his life in danger: yet all the notice which the parliament took of this enormity, even in ſuch a paltry court, was to enact, that no man could afterwards be queſtioned for his conduct in parliament.—4 Henry VIII. c. 8. This prohibition, however, muſt be ſuppoſed to extend only to the inferior courts; for, as to the king, his privy-council, and the ſtar-chamber, they were ſcarcely bound by any law.

† 22 Henry 8. c. 9.

‡ 26 Henry 8. c. 13.

coun-

counterfeiting the king's ſign manual, ſignet or privy ſeal *; refuſing to abjure the pope†; deflowering, or marrying without the royal licence any of the king's children, or reputed children, ſiſters, aunts, nephews or nieces‡; marrying with the king by a woman not a virgin, without previouſly diſcovering to him ſuch her unchaſte life, or any other perſon knowing it, and not diſcovering it to the king §; a law by which the king expected that parents ſhould ſo far forget the ties of natural affection, and the ſentiments of ſhame and decency, as to reveal to him the moſt ſecret diſorders or infirmities of their families. Judging, or *believing*, manifeſted by any overt-act, the king to have been lawfully married to Ann of Cleves‖; and derogating from the king's royal ſtile and title, and denying his ſupremacy**; all which new and ſtrange treaſons were totally abrogated by the ſtatute 1 Mar. c. 1. which

* 27 Hen. 8. c. 2.
† 28 Hen. 8. c. 11.
‡ 31 Hen. 8. c. 18.
§ 33 Hen. 8. c. 1.
‖ 32 Hen. 8. c. 26.
** 35 Hen. 8. c. 1.

reduced all treaſons to the ſtandard of 25 Edw. III.

But the chief advantage which reſulted to the nation during this bloody reign, was the extinction of the uſurped power of the Pope, whoſe connections with this iſland were for ever cut off and deſtroyed *;—though this happy event had its riſe more from the unbridled paſſions of the king, than from any wiſh to promote the intereſts of his ſubjects.

The diſſolution of the monaſteries that took place alſo in this reign †, which though originating from the rapacity of Henry, ultimately tended to the extenſion of the liberties of the nation. The church poſſeſſed near a third part of the lands of the whole kingdom, which being afterwards ſold by the king, and coming into the hands of private perſons, ſet up many thouſand families who had no dependence on the crown.—

* 24 Hen. 8. c. 12. 25 Hen. 8. c. 20, 21.

† 27 Hen. 8. c. 28. 31 Hen. 8. c. 13.

The

The number of freeholders having by that means conſiderably increaſed, the benefits which flowed from that ſource became by degrees very evident. The Commons, who were all obedience to the court, and only ſummoned by kings as an inſtrument to obtain money with a colour of law, began to grow peremptory, and to hem in the exorbitances of princes.

The abolition of the ancient religion very much contributed to the regular execution of juſtice. For while the Catholic ſuperſtition ſubſiſted, there was no poſſibility of puniſhing any crime in the clergy. The church would not permit the magiſtrate to try the offences of her members, and ſhe could not herſelf inflict any civil penalties on them.—Henry reſtrained theſe pernicious immunities. The privilege of clergy was aboliſhed for the crimes of petty treaſon, murder, and felony, to any perſon under the degree of a ſub-deacon *. By the former ſuperſtition, the laity were exempted from puniſhment

* 23 Hen. 8. c. 1.

on

on their flying to churches and ſanctuaries. The parliament abridged theſe privileges.—It was declared, that no ſanctuaries were allowed in caſes of high-treaſon *, next in thoſe of wilful murder, rape, burglary, robbery on the high-way, or in any houſe, church, or chapel †; but though ſome limitations were created by this act, and the 22 Henry VIII. c. 14, the progreſs of the reformation removed all diſtinction between the clergy and other ſubjects, and entirely aboliſhed the privilege of ſanctuaries.

Henry adhered to the example of his father in curbing the power of the nobility.—He paſſed an act to puniſh retainers, the giving of liveries and badges, maintenance, and embracery ‡; by which he not only ſecured his own peace, but gave a check to the inſolence and tyranny which naturally aroſe out of the feudal inſtitutions. A general permiſſion was granted to diſpoſe of real eſtates by will ‡, which hitherto had in

* 26 Hen. 8. c. 13. † 32 Hen. 8. c. 12.
† 33 Hen. 8. c. 10. ‡ 27 Hen. 8. c. 10.

general

general been forbidden; Wales was incorporated with England; and the ſame liberties and privileges were extended to all perſons born there, as thoſe enjoyed by other ſubjects of England *. The bankrupt laws were firſt introduced, as well for the puniſhment of the fraudulent, as the relief of the unfortunate trader †. Several counties palatine were deſtroyed; the unreaſonable privileges of others were abridged ‡; and though the tyranny of Henry was exceſſive, a more regular police was however eſtabliſhed, and a ſtricter adminiſtration of juſtice took place in his reign, than had been known ſince the beginning of the monarchy.

* 27 Hen. 8. c. 26.

† 34 Hen. 8. c. 4.

‡ 27 Hen. 8. c. 24.

SECT.

SECTION VIII.

EDWARD VI. was only of the tender age of nine years and three months old, when he aſcended the throne, upon the demiſe of his father. Henry, by his will, had fixed the majority of the prince, at the completion of his eighteenth year; and he appointed ſixteen executors, to whom, during the minority, he entruſted the government of the king and kingdom. But the firſt act of the executors and counſellors was, to infringe the late king's intentions, as conveyed by his will, in a material point. To ſupport the royal dignity, they deemed it neceſſary to chuſe a protector; and the Earl of Hertford, who, as he was the king's maternal uncle, and had no claims to inherit the crown, was elevated to the protectorſhip *.

* Camd. Intro. p. 5. Rap. vol. 2. p. 5. Hume, vol. 4. p. 283.

The

The next meaſure which the executors adopted was a new creation of nobility.—It was the intention of Henry, a little before his death, to ſupply the place of thoſe peerages, which had fallen by former attainders, or the failure of iſſue. Witneſſes were examined to prove ſuch his intentions before the Board of Regency; and their teſtimony being relied upon, the executors proceeded to the fulfilling of theſe engagements.—Among the number of new creations, Hertford was raiſed to the title and honours of Duke of Somerſet; but his ambition ſoared ſtill higher. For, by his influence and authority, he procured a patent from young Edward, by which he entirely overturned the will of Henry VIII. produced a total ſubverſion in the government, and may ſeem even to have ſubverted all the laws of the kingdom. He named himſelf Protector, with full regal power, and appointed a council, conſiſting of all the former counſellors, and all the executors, except the Earl of Southampton, who had always been engaged in an oppoſite party to Somerſet. He reſerved a power of naming any other

counſellors at pleaſure; and he was bound to conſult with ſuch only as he thought proper. The Protector and his council were likewiſe empowered to act at *diſcretion*, and to execute whatever they deemed for the public ſervice, without incurring any penalty or forfeiture of any law, ſtatute, proclamation, or ordinance whatſoever *.

Even had this patent been more moderate in its conceſſions, and had it been drawn by direction of the executors appointed by Henry, its legality might juſtly be queſtioned; ſince it ſeems eſſential to a truſt of this nature to be exerciſed by the perſons entruſted, and not to admit of a delegation to others. But as the patent, by its very tenor, where the executors are not ſo much as mentioned, appears to have been ſurreptitiouſly obtained from a minor king, the protectorſhip of Somerſet was a plain uſurpation, which it is impoſſible by any arguments to juſtify. The connivance, however, of the executors, and their pre-

* Rap. vol. 2. p. 6. Hume, vol. 4, p. 286.

ſent

ſent acquieſcence in the new eſtabliſhment, made it be univerſally ſubmitted to; and as the young king diſcovered an extreme attachment to his uncle, who was in the main a man of probity, no objections were made to his power and title. All men of ſenſe, likewiſe, who ſaw the nation divided by the religious zeal of the oppoſite ſects, deemed it the more neceſſary to entruſt the government to one perſon, who might check the exorbitancies of faction, and inſure the public tranquillity. And though ſome clauſes of the patent ſeemed to imply a formal ſubverſion of all limited government, ſo little jealouſy was then uſually entertained on that head, that no exception was ever taken at bare claims or pretenſions of this nature, advanced by any perſon poſſeſſed of ſovereign power. It was the actual exerciſe alone of arbitrary adminiſtration, and that in a moſt flagrant and unpopular degree, that was able ſometimes to give umbrage to the nation.

By the death of Henry, the hopes of the Proteſtants, and the fears of the Catholics, began to revive; and the zeal of theſe par-

ties produced every where diſputes and animoſities, the uſual preludes to more fatal diviſions. The Protector was conſidered as a ſecret friend to the reformers; and being now freed from all reſtraint, he ſcrupled not to diſcover his intention of correcting all abuſes in the ancient religion, and of adopting ſtill more of the Proteſtant innovations. He ſo managed it, that all perſons entruſted with the King's education ſhould be attached to the ſame principles; and as the young King diſcovered a zeal for every kind of literature, eſpecially the theological, far beyond his years, all men foreſaw, in the courſe of his reign, the total abolition of the Catholic faith in England; and they early began to declare themſelves in favour of thoſe tenets which were likely to become in the end entirely prevalent.— Southampton, the chancellor, who was one of the executors of Henry VIII. was a man of different politics and religion from thoſe of the Protector, who therefore wiſhed to have him expelled from the regency; and he ſoon furniſhed him with a pretence.— With a view that he might have the greater leiſure to attend to ſtate affairs, he had, of his

his own authority, put the great ſeal into commiſſion, and had empowered four lawyers, Southwell, Tregonel, Oliver, and Bellaſis, to execute in his abſence the office of chancellor.

This meaſure ſeemed very exceptionable, and the more ſo, as two of the commiſſioners, being canoniſts, the lawyers ſuſpected, that, by this nomination, the chancellor had intended to diſcredit the common law. Complaints were made to the council, who, influenced by the Protector, gladly laid hold of the opportunity to depreſs Southampton. The judges were conſulted, who gave for anſwer, that the commiſſion was illegal, and that the chancellor, by his preſumption in granting it, had juſtly forfeited the great ſeal, and was even liable to puniſhment.— When ſummoned before the council, he mentioned that he held his office by the late King's will, founded on act of Parliament, and could not loſe it without a trial in Parliament; and that if the commiſſion, which he had granted, was found illegal, it might be cancelled, and all the ill conſequences of it eaſily remedied; and that the depriving him

him of his office, for an error of this nature, was a precedent by which any other innovation might be authoriſed. This defence had no effect upon the council, who declared that he had forfeited the great ſeal; (which was given to Lord St. John) that a fine ſhould be impoſed on him, and that he ſhould be confined to his own houſe during pleaſure*.

By the fall of Southampton, few members ſeemed to retain any attachment to the Romiſh perſuaſion; and moſt of the counſellors appeared even ſanguine in forwarding the progreſs of the reformation.

The riches which moſt of them had acquired from the ſpoils of the clergy, induced them to widen the breach between England and Rome; and by eſtabliſhing a contrariety of ſpeculative tenets, as well as of diſcipline and worſhip, to render a coalition with the mother church altogether impracticable. Their rapacity alſo, the chief ſource of their reforming ſpirit, was excited by the proſpect

* Hollingſhed, p. 979. Rap. vol. 2. p. 6. Hume, vol. 4. p. 286.

of

of pillaging the ſecular, as they had already done the regular clergy; nor were they ignorant, that while any ſhare of the old principles remained, or any regard paid to the eccleſiaſtics, they could never hope to ſucceed in that enterpriſe.—With theſe ſordid views, ſo diſgraceful to real Chriſtianity, they purſued their meaſures with indefatigable induſtry; and the popular current which flowed into the channel of reformation, tended greatly to accelerate them.

The Protector, in his ſchemes for advancing the reformation, had always recourſe to the counſels of Cranmer, who, being a man of moderation and prudence, was averſe to all violent changes, and determined to bring over the people by inſenſible innovations, to that ſyſtem of doctrine and diſcipline which he deemed the moſt pure and perfect. He probably alſo foreſaw, that a ſyſtem, which carefully avoided the extremes of reformation, was likely to be moſt laſting; and that a devotion merely ſpiritual, was fitted only for the firſt fervours of a new ſect, and upon the relaxation of theſe, naturally gave place to the inroads of ſuperſtition.

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He ſeems, therefore, to have intended the eſtabliſhment of a hierarchy, which, by being ſuited to a great and ſettled government, might ſtand as a perpetual barrier againſt Rome, and might retain the reverence of the people, even after their enthuſiaſtic zeal was diminiſhed, or entirely evaporated.

The perſon who oppoſed, with the greateſt authority, the further advances of the reformation, was Gardener, biſhop of Wincheſter. He magnified the great wiſdom and learning of the late King; and inſiſted on the propriety of perſevering, at leaſt, till the young King's majority, in the eccleſiaſtical model eſtabliſhed by his father. He defended the uſe of images, which were now openly attacked by the proteſtants, and even deigned to write an apology for *holy water*. Above all, he inſiſted, that the laws ought to be obſerved, that the conſtitution ought to be preſerved inviolate, and that it was dangerous to follow the will of the ſovereign, in oppoſition to an act of parliament. This plea, however, could ſcarcely, in the preſent caſe, be maintained with any plauſibility by Gardener. An act of Parliament had inveſted

veſted the crown with a legiſlative power; and royal proclamations, even during a minority, were armed with the force of laws.

The Protector finding himſelf ſupported by this ſtatute, was determined to employ his authority in favour of the reformers; and having ſuſpended, during the interval, the juriſdiction of the biſhops, he appointed a general viſitation to be made in all the dioceſes of England *. The viſitors conſiſted of a mixture of clergy and laity, and had ſix circuits aſſigned them. The chief purport of their inſtructions was, beſides correcting immoralities and irregularities in the clergy, to aboliſh the ancient ſuperſtitions, and to bring the diſcipline and worſhip ſomewhat nearer the practice of the reformed churches. The viſitors were enjoined to retain for the preſent all images which had not been abuſed to idolatry; and to inſtruct the people not to deſpiſe ſuch ceremonies as were not yet abrogated, but only to beware of ſome particular ſuperſtitions, ſuch as the ſprinkling of their beds with holy water, and

* Burnet's Ref. vol. 2. p. 26. Rap. vol. 2. p. 7. Hume, vol. 4. p. 291.

the ringing of bells, or uſing of bleſſed candles, in order to drive away devils *.

The Romiſh clergy throughout the kingdom violently declaimed againſt theſe meaſures, and zealouſly defended the ancient ſuperſtitions. Orders therefore were given to reſtrain the topics of their ſermons. Twelve homilies were publiſhed, which they were directed to read to the people; and all of them were prohibited, without expreſs permiſſion, from preaching any where but in their pariſh churches; whereas the Proteſtant clergy, by the grant of particular licences, were allowed unbounded liberty. Bonner, biſhop of London, proteſted againſt theſe regulations, as being contrary to God's law, and the ordinances of the church; but being intimidated by the council, who had ſent for him, he ſubſcribed a ſubmiſſion in ample terms.

Gardiner was more high-ſpirited and firm. He writ a letter to Sir John Godſalve, who

* Burnet, vol. 2. p. 28. Hume, vol. 4. p. 291.

was

was one of the viſitors, expreſſing a reſolution to ſuffer any thing rather than depart from his conſcience. The council being informed that he intended to refuſe to ſet forth the homilies, ſummoned him before them; where, being examined, he ſaid, they were contrary to the word of God, and that his conſcience would not ſuffer him to obſerve them.

This oppoſition drew on him the indignation of the council, who ſent him to the Fleet, where he was uſed with ſome ſeverity *.

The Protector having returned from a ſucceſsful campaign, againſt the Scots, with whom the nation was then at war, ſummoned a parliament to meet on the 4th day of November, 1547: meanwhile he ſo ingratiated himſelf with the young King, as to obtain from him a patent under the great ſeal, to ſit in parliament on the right hand

* Burnet, vol. 2. p. 36, 37. Rap. vol. 2. p. 9. Hume, vol. 4. p. 293.

ſide of the throne, under the cloth of ſtate, and to enjoy all the honours and privileges that had uſually been poſſeſſed by any Prince of the blood, or uncle of the Kings of England. In this patent, the King employed his diſpenſing power, by ſetting aſide the ſtatute of precedency enacted during the former reign, which brought upon the Protector the envy and ill-will of the powerful families *. But if Somerſet gave offence to the nobility, by aſſuming too much ſtate, he deſerves great praiſe for the laws paſſed this ſeſſion, by which the rigour of former ſtatutes was much mitigated, and ſome ſecurity given to the freedom of the conſtitution, in which the commons are moſt intereſted. A law was made to repeal the ſtatute of 28 Hen. VIII. c. 17. which gave authority to the King, after his age of four and twenty years, to repeal, by his letters patent, all former ſtatutes made during his minority; and to empower every heir of the late King to repeal all ſtatutes made before his full age of four and twenty years, ſaving this ſtatute, and all pardons granted by parliament †. It

* Burnet, vol. 2. p. 39. † 1 Edw. vi. c. 11.

was

was enacted, that no act, deed, or offence, being by act of parliament made treaſon, or petit treaſon, by words, writing, cyphering, deeds, or otherwiſe, ſhall be ſo adjudged, but only ſuch as be treaſon or petit treaſon, by the ſtatute made in the twenty-fifth year of King Edw. III. and ſuch offences as ſhall hereafter by this act be declared to be treaſon, or petit treaſon. It was further ordained, that all ſtatutes concerning religion or opinions, namely, the ſtatute made in the 5th Rich. II. the ſtatute made in the 2d of Hen. V. the ſtatute made in the 25th Hen. VIII. concerning the puniſhment of Heretics and Lollards, and every proviſion therein contained; the ſtatute made in the laſt reign for the aboliſhment of diverſity of opinions in matters of religion, known by the name of the law of the Six Articles, and every other act concerning doctrine and matter of religion ſhall be repealed. All acts made ſince the firſt year of King Hen. VIII. declaring any thing to be felony that was not ſo before, were likewiſe repealed. A repeal alſo paſſed of that infamous ſtatute, whereby the King's proclamations were to be obeyed as

though

though they had been made by authority of Parliament; a ſtatute which aimed a mortal blow at the liberties of the nation, by arming the Sovereign with abſolute power; and had it continued in force, there would have been no occaſion for future parliaments. It was alſo enacted, that all who denied the King's ſupremacy, or aſſerted that of the Pope in words, ſhould for the firſt offence forfeit their goods and chattles, and ſuffer impriſonment during pleaſure; for the ſecond offence, ſhould incur the pain of præmunire; and for the third offence, be attainted of treaſon. But if any did in writing, printing, or by any overt act or deed, endeavour to deprive the King of his eſtate or titles, particularly of his ſupremacy; or to confer them on any other, after the firſt day of March next, he was to be adjudged guilty of high treaſon; and if any of the heirs of the crown ſhould uſurp upon another, or did endeavour to break the ſucceſſion of the crown, it was declared high treaſon in them, their aiders and abettors. And all were to enjoy the benefit of clergy, and the priviledge of ſanctuary, as they had

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it before King Hen. the VIII's reign; excepting ſuch only as were guilty of murder, poiſoning, burglary, robbing on the highway, the ſtealing of cattle, or ſtealing out of churches or chapels. Poiſoners were to ſuffer as other murderers. None were to be accuſed of words, but within a month after they were ſpoken *.

Beſides theſe ſtatutes, which were calculated to advance the liberties of the ſubject, another ſtatute was enacted for the puniſhment of vagabonds, of a quite contrary tendency, and appears to be rigorous beyond what one could have conceived poſſible to be expected under the Engliſh government. This law ſays, "That if any perſon ſhall "bring to two juſtices any runaway ſer-"vant, or any other perſon living idle and "loiteringly, by the ſpace of *three days*, the "ſaid juſtices ſhall cauſe them to be mark-"ed with a hot iron, on the breaſt, with "the mark V. and adjudge him to be a "*ſlave* to the perſon that brought him, his "executors or aſſigns, for two years after;

* 1 Edw. 6. c. 12.

"that

" that the perſon who ſhall take the ſaid " ſlave ſhall give him bread, water, or " ſmall drink, and refuſe-meat, and cauſe " him to work, by *beating*, *chaining*, or " *otherwiſe*, in ſuch labour as he ſhall be " put to, *be it never ſo vile*. And if ſuch " ſlave abſent himſelf from his maſter, " within the ſaid term of two years, by the " ſpace of fourteen days, then he ſhall be " adjudged by two juſtices to be marked " on the forehead, or the ball of the cheek, " with an hot iron, with the ſign of an S. " and further ſhall be adjudged to be a " ſlave to his ſaid maſter *for ever*. And if " the ſaid ſlave ſhall run away the ſecond " time, he ſhall be adjudged a *felon*. No " clerk, convict, ſhall make his purgation, " but ſhall be a ſlave for one year, to him " who will become bound, with two ſure- " ties, in 20 l. to the ordinary, to the " King's uſe, to take him into ſervice, and " he ſhall be uſed in all reſpects *as is afore-* " *ſaid*, like to a vagabond. A clerk at- " tainted or convict, which by the laws " cannot make his purgation, may by the " ordinary be delivered to any man, who

" will

will become bound with two ſufficient ſureties, to keep him as his *ſlave* for five years, and then he ſhall be uſed in all reſpects, as is aforeſaid, for *a vagabond*, ſave for burning in the breaſt. It ſhall be lawful to every perſon, to whom any ſhall be adjudged a *ſlave*, to put a *ring of iron about his neck, arm, or leg*. A *juſtice of peace and conſtable* may bind a beggar's man-child apprentice to the age of fourteen years, and a woman-child to the age of twenty years, to any that will require them; and if the ſaid child run away, then his maſter may retain and uſe him for the term aforeſaid as his *ſlave* *. The clauſes contained in this act concerning clerks convict, ſeem to ſhew, that it was chiefly levelled againſt the monks and friars, who, being turned out of their monaſteries, and little inured to labour, and unacquainted with mechanical employments, choſe to throw themſelves upon the charity and compaſſion of the people. Theſe men, whereever they went, inveighed againſt the government, and ſtrove to inſpire the people

* 1 Edw. 6. c. 111. Exp. and Rep. 3, and 4 Edw. 6. c. 16. and 39 Eliz. c. 4.

with a notion, that things would never be well ſettled till they were again reſtored to their houſes; therefore the court judging it to be an effect of their idleneſs, and that if they betook themſelves to ſome occupation, they would at length loſe this habit, reſolved to make them work in ſpite of their inclination.

However, this law was too general not to give umbrage to the nation;—it occaſioned great murmuring every where; and on that account was never rigorouſly put in execution, though it muſt be acknowledged, that a moſt commendable clauſe was tacked to it, in behalf of the aged and indigent poor. Such an act of parliament appears to us very ſtrange in this enlightened age. The commiſſion of the peace is an honourable appointment, in the power of the crown, and uſually beſtowed upon men of conſideration, learning, and known probity. Without theſe qualifications, the deligation of the powers of this cruel ſtatute, to perſons of any other deſcription, would have been as bad as truſting a naked ſword in the hands of

of a madman. No man who valued his honour, or who had the leaſt tincture of humanity, would have deigned to act under ſuch a ſtatute, which was only fit to be exerciſed by the man as callous of feeling as the ruffian who officiates as a turnkey of Newgate, whoſe hardened ſoul being daily familiarized to ſcenes of woe, is inſenſible to the diſtreſs of the devoted victim, and his weeping family, though, perhaps, ſentenced to die for the thoughtleſs commiſſion of a trivial crime againſt ſociety.

Theſe were the principal acts which paſſed during this ſeſſion. The members in general diſcovered a very paſſive diſpoſition with regard to religion. Some few appeared zealous for the reformation; others ſecretly harboured a ſtrong attachment to the Catholic faith, but the greater part appeared willing to take any impreſſion which they ſhould receive from intereſt, authority, or the reigning faſhion.

The convocation met at the ſame time with the parliament; and as it was found that their debates were at firſt cramped by the rigorous ſtatute of the Six Articles, the King granted them a diſpenſation from that law, before it was repealed by parliament.

The clergy of the lower houſe of convocation petitioned the archbiſhop of Canterbury, and the reſt of the prelates of the higher houſe, "to be adjoined, and aſſoci-"ate with the lower houſe of parliament;" or if this priviledge were denied them, which they claimed as their ancient right, "That "all ſuch ſtatutes and ordinances as ſhall be "made concerning all matters of religion "and cauſes eccleſiaſtical, may not paſs "without the ſight and aſſent of the ſaid "clergy *." But the principles which now prevailed, were more favourable to the civil than the eccleſiaſtical power; ſo that this demand of the convocation was rejected.

* Burnet, vol. 2. p. 117. Col. rec.

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The Protector had aſſented to the repeal of that law, which gave to the King's proclamations the authority of ſtatutes; but he did not intend to renounce that arbitrary or diſcretionary exerciſe of power, in iſſuing proclamations which had ever been aſſumed by former Princes. He even continued to exert this authority in ſome particulars, which were in that age conſidered to be of the greateſt importance. Orders were iſſued by council, that candles ſhould no longer be carried about on Candlemaſs-day, aſhes, on Aſh-Wedneſday, and palms, on Palm-Sunday *. The country people generally reliſhed all theſe ſhews and proceſſions, and judged it a dull buſineſs, only to come to church for divine worſhip, and the hearing of ſermons; therefore, they were much delighted with the foppery and chearfulneſs of thoſe rites. But others, obſerving that theſe ceremonies were kept up, juſt as the Heathens did their plays and feſtivals, for their gods, thought them contrary to the gravity and ſimplicity of the Chriſtian religion;

* Burnet, vol. 2. p. 59.

and

and therefore were earneſt to have them removed. This was ſo effectually repreſented to the council by Cranmer, that it immediately produced the order for their ſuppreſſion.

The ſevere diſpoſition which naturally attends all reformers, prompted likewiſe the council to aboliſh the practice of creeping to the Croſs on Good Friday, taking holy bread and water, and any other that the archbiſhop of Canterbury ſhould at any time certify to the other biſhops, in the King's name, as improper to be uſed *.

There aroſe every where great heats with reſpect to the removal of images, which had been abuſed to ſuperſtition, ſome affirming, and others denying that they were ſo abuſed. There were, however, in the churches, ſome images of ſo ſtrange a nature, that the abuſe of them could not be denied. Such was the image of the Trinity, in which the Father is repreſented ſittting on

* Burnet, vol. 2, p. 59.

the

the one hand, as an old man with a triple crown, and rays about him; the Son on the other hand, as a young man, with a crown and rays; and the Virgin Mary between them, and the emblem of the Holy Ghoſt was repreſented by a dove ſpread over her head. The groſs expreſſion of this inconceivable myſtery gave ſo much offence to the enlightened minds of the reformers, that they reſolved upon the entire removal of all images. The Protector, with the council, writ to Cranmer, that for the purpoſe of putting an end to all theſe conteſts, ſo that the living images of Chriſt might not quarrel about the dead ones, it was reſolved upon, that they ſhould all be taken down, and therefore he was ordered to ſee this executed in his own dioceſe, and to tranſmit it to the other biſhops, to be in like manner executed by them. Orders were likewiſe iſſued, that all rich ſhrines, with the plate belonging to them, ſhould be brought into the King's uſe; and that the clothes which covered them ſhould be converted to the uſe of the poor. Gardiner, and thoſe of his party, were afflicted at thoſe proceedings;

ings: he had always been a ſtrong advocate for the keeping up of images, and was in fact a man whom the Romans looked upon as a *good Catholic*. But, ſeeing that the ſpirit of reformation was too high to be oppoſed with ſucceſs, they all ſubmitted, and the churches were therefore emptied of all thoſe pictures and ſtatu es which had been for many ages the chief object of the people's worſhip *.

Gardiner, however, lived to take ample revenge upon the converts to the new religion, during the ſucceeding reign. He adviſed Queen Mary to proſecute the moſt violent meaſures to bring the nation back to the ancient faith †; and his advice was fatally taken by that bigotted and cruel Princeſs. The excruciating torments which the reformers ſuffered at the ſtake, afforded him a pleaſure only fit to be enjoyed by his diabolical ſoul.

The following inſtance of it is ſhocking to humanity, and ought to warn zealous

* Burnet, vol. 2, p. 60, 61. † Ibid. p. 299.

bigots

bigots for ever to avoid ſuch odious and fruitleſs barbarity.

Ridley, biſhop of London, and Latimer, formerly biſhop of Worceſter, two prelates celebrated for learning and virtue, periſhed together in the ſame flames, at Oxford, on the 16th day of October, 1555, ſupporting each other's conſtancy by their mutual exhortations. When they were brought to the ſtake, before Baliol-college, they embraced one another with great affection, Ridley ſaying to his fellow-ſufferer, "Be of good "heart, Brother, for God will either aſſuage "the fury of the flame, or enable us to abide "it." And Latimer, in his turn, conſoled him in theſe words:—"Be of good com-"fort, we ſhall this day light ſuch a candle "in England, as, I truſt, by God's grace, "ſhall never be put out." The executioners had been ſo merciful, (for that clemency may more naturally be aſcribed to them than to a Popiſh zealot) as to tie bags of gun-powder about theſe prelates, in order to put a ſpeedy period to their tortures.—The exploſion immediately killed Latimer,

who was in extreme old age; but Ridley had a more lingering torment, for, they had thrown on the fire ſo much wood, that the flame, for want of air, could not break through it, ſo that his legs were almoſt conſumed before this was obſerved; and then, on opening a paſſage to the flame, he ſoon expired.

Gardiner was ſo eager after the blood of thoſe Prelates, that he would not dine on the day of their ſuffering, until he had received the news of their death, which did not arrive until four o'clock in the afternoon. He then went cheerfully to dine; but was at dinner ſtruck with the illneſs of which he died. It was a ſuppreſſion of urine, which in a few weeks brought him to his grave. He had great remorſe for his former life, and in his laſt moments exclaimed, "I have erred with Peter, but I "have not mourned with him *."

As private maſſes were aboliſhed by law, it became neceſſary to compoſe a new com-

* Burnet, vol. 2. p. 318, 319, 320.

munion-

munion-ſervice; and the council went ſo far, in the preface which they prefixed to this work, as to leave the practice of auricular confeſſion wholly indifferent. "That "ſuch as deſired to make auricular con- "feſſion ſhould not cenſure thoſe who were "ſatisfied with a general confeſſion to God, "and that thoſe who only uſed confeſſion "to God, and to the church, ſhould not "be offended with thoſe who uſed auricular "confeſſion to a prieſt; but that all ſhould "keep the rule of charity, and every man "be ſatisfied to follow his own conſcience, "and not judging another man's in things "not appointed by God. After the prieſt "had received the ſacrament, he was to "turn to the people, and read an exhorta- "tion to them, the ſame we now uſe, only "a little varied in words *."

This was a prelude to the entire abolition of that invention, one of the moſt powerful engines that ever was contrived for degrading the laity, and giving their ghoſtly di-

* Burnet, vol. 2. p. 64, 65.

rectors an entire aſcendant over them.—And it may juſtly be ſaid, that, though the prieſt's abſolution, which attends confeſſion, ſerves ſometimes to eaſe weak minds from the immediate agonies of ſuperſtitious terror, it operates only by enforcing ſuperſtition itſelf, and thereby prepares the mind for a more violent relapſe into the ſame diſorders.

The people were at that time (1548) extremely diſtracted, by the oppoſite opinions of their preachers; and as they were totally unable to judge of the reaſons advanced on either ſide, and naturally regarded every thing which they heard at church, as of equal authority, a great confuſion and fluctuation reſulted from this uncertainty. The council had firſt endeavoured to remedy the inconvenience, by laying ſome reſtraints on preaching; but finding this expedient ineffectual, a proclamation was iſſued, which impoſed a total ſilence on the preachers, and thereby put an end, at once, to all the polemics of the pulpit*. By the nature of

* Burnet, vol. 2. p. 81.

things,

things, this reſtraint could only be temporary. For, in proportion as the ceremonies of public worſhip, it ſhews, and exterior obſervances were retrenched by the reformers, the people were inclined to contract a ſtronger attachment to ſermons, whence alone they received any occupation or amuſement. The ancient religion, by giving its votaries ſomething to do, freed them from the trouble of thinking. Sermons were delivered only in the principal churches, and at ſome particular faſts and feſtivals; and the practice of harranguing the populace, which, if abuſed, is ſo powerful an incitement to faction and ſedition, had much leſs ſcope and influence during thoſe ages.

A parliament was held on the 24th day of November, to which day it had been prorogued from the 15th of October, by reaſon of the plague then in London. The principal buſineſs tranſacted this ſeſſion regarded eccleſiaſtical affairs, which were now the chief object of attention throughout the nation. A committee of biſhops and divines had been appointed by the council,

to compoſe a liturgy, which they had executed with that moderation requiſite in ſo delicate an undertaking.

They retained as much of the ancient maſs, as the principles of the reformers would permit. They indulged nothing to the ſpirit of contradiction, which ſo naturally takes place in all great innovations; and they flattered themſelves, that they had eſtabliſhed a ſervice, in which every denomination of Chriſtians might, without ſcruple, concur. The maſs had always been celebrated in Latin, a practice which might have been deemed abſurd, had it not been found uſeful to the clergy, by impreſſing the people with an idea of ſome myſterious unknown virtue in thoſe rites, and by checking all their pretenſions to be familiarly acquainted with their religion. But as the reformers pretended, in ſome few particulars, to encourage private judgment in the laity, the tranſlation of the liturgy, as well as of the ſcriptures, into the vulgar tongue, ſeemed more conformable to the genius of their ſect; and this innovation, with the

the retrenching of prayers to ſaints, and of ſome ſuperſtitious ceremonies, was the chief difference between the old maſs, and the new liturgy *.

The parliament eſtabliſhed this form of worſhip in all the churches, by paſſing an act "For uniformity of ſervice, and admi-"niſtration of the ſacraments, throughout "the realm †."

There was another material act paſſed this ſeſſion, which, it ſeems, in thoſe days, created much contradiction and cenſure. The former canons had eſtabliſhed the celebacy of the clergy, and though this practice is uſually aſcribed to the policy of the church of Rome, who thought, that the eccleſiaſtics would be more devoted to their ſpiritual head, and leſs dependant on the

* Burnet, vol. 2. p. 73, 74, 75.

† 2 and 3 Edw. 6. c. 1.—This ſtatute was confirmed by 5 and 6 Edw. VI. c. 1. and repealed by 1 Mar. ſeſs. 2. c. 2. which act of 1 Mar. is repealed by 1 Eliz. c. 2. and 1 James I. c. 28. ſ. 48. and this act, ſo far as it relates to the church, is made perpetual by 5 Anne, c. 5.

civil

civil magiſtrate, when freed from the powerful tye of wives and children; yet was this inſtitution much forwarded by the principles of ſuperſtition inherent in human nature. Theſe principles had rendered the panegyrics on an inviolate chaſtity ſo frequent among the ancient fathers, long before the eſtabliſhment of celebacy. And even this parliament, though they enacted a law to take away all poſitive ſtatutes made againſt the marriage of prieſts, yet confeſs in the preamble, "That it were not only "better for the eſtimation of prieſts, and "other miniſters in the church of God, to "live chaſte, ſole and ſeperate from the "company of women, and the bond of "marriage; and that it were moſt to be "wiſhed that they would willingly live in a "perpetual chaſtity and abſtinence from "the uſe of women."

The inconveniences which had ariſen from the compelling of chaſtity, and the prohibiting of marriage, are the reaſons aſſigned for indulging a liberty in this particular.

ticular *. The ideas of penance alſo were ſo much retained in other particulars, that an act of Parliament was made forbidding the uſe of fleſh in Lent, and other times of abſtinence. In the preamble to this law it is ſaid, that " That the King, conſidering that due and godly abſtinence is a mean to virtue, and to ſubdue men's bodies to their ſoul and ſpirit, and conſidering alſo *ſpecially* that fiſhers, and men uſing the trade of living by fiſhing in the ſea may thereby the rather be ſet on work, and that by eating of fiſh much fleſh ſhall be ſaved and encreaſed; therefore it was enacted, that all former laws regarding faſting, were, after the firſt day of May, to be repealed;" and appointing the particular times of abſtinence from fleſh, under the penalties therein contained. A proviſo was added, for excepting ſuch as ſhould obtain the King's licence, or were ſick, weak with great age, women with child, or lying in child-bed, and the King's lieutenant, deputy, or captain of any of his Majeſty's army, hold, or fortreſs †.—

* 2 & 3 Edw. VI. c. 19, enforced by the 5 & 6 Edw. VI. c. 12. rep. by 1 Mar. ſeſſ. 2, c. 2, and made perpetual by 1 Jac. I. c. 25, ſ. 40. † 2 & 3 Edw. VI, c. 19.

Biſhop Burnet, in reaſoning upon this act, ſays, "It was much lamented then, and there is as much cauſe for it ſtill, that carnal men have taken advantages from the abuſes that were formerly practiſed, to throw off good and profitable inſtitutions, ſince the frequent uſe of faſting, with prayer and true devotion joined to it, is, perhaps, one of the greateſt helps that can be deviſed to advance one to a ſpiritual temper of mind, and to promote a holy courſe of life; and the mockery that is diſcernible in the way of ſome men's faſting, is a very ſlight excuſe for any to lay aſide the uſe of that which the Scriptures have ſo much recommended *."

A grievous tax was impoſed this ſeſſion upon the whole ſtock and monied intereſt of the kingdom, and even upon its induſtry.—It was a ſhilling in the pound yearly, during three years, on every perſon worth ten pounds, or upwards; the double on aliens and denizens. Theſe laſt, if above twelve years of age, and if worth leſs than twenty ſhillings,

* Vol. 2, p. 96.

were

were to pay eight-pence yearly. Every wether was to pay two-pence yearly; every ewe three-pence. The woollen manufactures were to pay eight-pence a pound on the value of all the cloth they made. Theſe exorbitant taxes on money, are a proof that few people lived on money lent at intereſt; for this tax amounts to half of the yearly income of all money-holders during three years, eſtimating their intereſt at the rate allowed by law, and was too grievous to be borne, if many perſons had been affected by it*.

The principal tenets and practices of the Catholic religion were now aboliſhed, and the Reformation, ſuch as it is enjoyed at preſent, was almoſt entirely compleated in England.—But the doctrine of the *real preſence*, though tacitly condemned by the new Communion Service, and by the abolition of many ancient rites, ſtill retained ſome hold on the minds of men. There was no opinion for which the prieſts contended more ignorantly and eagerly,

* 2 & 3 Edw. VI. c. 36. Altered by the 3 & 4 Edw. VI. c. 23; and now expired.

and that the people generally believed more blindly and firmly; as if the ſtrong belief of ſo palpable an abſurdity were nothing elſe but winking very hard; and it was the laſt doctrine of Popery which was wholly abandoned by the people, who looked upon thoſe who ſtrove to perſuade them otherwiſe, as men that intended to rob them of the greateſt privilege they could enjoy *. The general attachment to this ſuperſtition was ſo violent, that the followers of Luther, notwithſtanding their ſeparation from Rome, had thought proper, under another name, ſtill to retain it; and the Catholic preachers in England, when reſtrained in all other ſpiritual matters, could not forbear, on every occaſion, to inculcate into the minds of their hearers, that they actually received the fleſh of Chriſt in the ſacrament.

Bonner, for this offence among others, had been tried by the Council, deprived of his ſee, and committed to cuſtody. Gardiner alſo, who had recovered his liberty, appeared anew refractory to the authority which created the

* Burnet, vol. 2, p. 104.

late

late changes in religion; and gave into that opinion, much favoured by all the Engliſh Catholics, that the King was ſupreme head of the church, but not the Council, during a minority. Having declined to give full ſatisfaction on this head, he was ſent to the Tower, and threatened with further effects of the reſentment of the Council *.

Theſe ſeverities were deemed neceſſary in that age, in order to enforce a uniformity in public worſhip and diſcipline. But there were other inſtances of perſecution derived from no origin but the bigotry of theologians; a malady which ſeems almoſt incurable. Though the Proteſtant divines had ventured to renounce opinions, deemed certain during many ages, they regarded, in their turn, the new ſyſtem as ſo certain, that they would ſuffer no contradiction with reſpect to it; and they were ready to burn in the ſame flames, from which they themſelves had ſo narrowly eſcaped, every one who ventured to differ from them. A commiſſion, by act of Council, was granted

* Hume, vol. 4, p. 322.

to

to the Archbiſhop of Canterbury, and ſome others, three of whom being a quorum, to examine and ſearch after all the Anabaptiſts, hereticks, or contemners of the Common Prayer*. They were to endeavour to reclaim them, to enjoin them penance, and grant them *abſolution*; but, in caſe of their obſtinacy, to excommunicate and impriſon them, and to deliver them over to the ſecular power, to be dealt with according to law. By this commiſſion they were not bound to obſerve the ordinary methods of trial; even the forms of law, which are a part of the conſtitution, were diſpenſed with; and if any ſtatute happened to interfere with the powers contained in it, they were over-ruled or abrogated by the Council.

Some tradeſmen of London were brought before theſe Commiſſioners, and were accuſed of maintaining, among other opinions, "That a man regenerate could not ſin; that though the outward man ſinned, the inward man ſinned not; that there was no Trinity of Perſons;

* Burnet, vol. 2, p. 111.

that

that Chriſt was only a holy prophet, and not at all God; that all we had by Chriſt was, that he taught us the way to Heaven; that he took no fleſh of the Virgin, and that the baptiſm of infants was not profitable *." One of them, who was prevailed upon to abjure, was puniſhed by carrying a faggot on the next Sunday at St. Paul's, where a Sermon was preached againſt his hereſy. But there was a woman accuſed of heretical principles, named Joan Bocher, commonly called Joan of Kent, who was ſo extremely obſtinate that the Commiſſioners could not perſuade her to recant.— "She denied that Chriſt was truly incarnate of the Virgin, whoſe fleſh being ſinful he could take none of it; but the Word, by the conſent of the inward man in the Virgin, took fleſh of her." Much pains was taken to induce her to alter this opinion, but all to no purpoſe. She was ſo extravagantly conceited of her own notions, that ſhe rejected all they ſaid with contempt; ſo that ſhe was adjudged to be an obſtinate heretick, and condemned to the flames. The amiable young king was moved to ſign a warrant to

* Burnet, vol. 2, p. 111.

burn

burn her, but could not be prevailed on to do it;—he thought it a piece of cruelty too like that which they had condemned in the Papiſts, to burn people for their conſciences. Cranmer was employed to perſuade him to ſign the warrant. He argued from the law of Moſes, by which blaſphemers were to be ſtoned;—that there was a great difference between errors in other points of divinity, and thoſe which were directly againſt the Apoſtles creed; that theſe were impieties againſt God which a prince, as being God's deputy, ought to puniſh; as the king's deputies were obliged to puniſh offences againſt the king's perſon.—Theſe arguments rather ſilenced than ſatisfied the young king, who, being overcome by importunity, at laſt ſubmitted to ſign the fatal warrant, though with tears in his eyes; but he at the ſame time told Cranmer, "That if he did wrong, ſince it was in ſubmiſſion to his authority, he ſhould anſwer for it to God." The Archbiſhop was very much touched at theſe words, inſomuch that both he and Ridley took her in cuſtody to their houſes, and endeavoured to convince her of her errors.—But ſhe continued, with a jeering and inſolent carriage,

carriage, to contemn all their arguments and admonitions; therefore ſhe was conducted to the ſtake, and burnt *.

This action was much cenſured, as being contrary to the clemency of the Goſpel, and was often made uſe of by the Papiſts, who alleged, that it was plain the Reformers were only againſt burning when they were in fear of it themſelves. The behaviour of the woman made her be looked upon by the people as a poor lunatick, fitter for a mad-houſe than the ſtake.

Men had generally entertained the idea, that all the ſtatutes for burning hereticks had been repealed; but now it was diſcovered that the burning of hereticks was authoriſed by the common law; ſo that the ſtatutes enacted concerning it, were only made to facilitate conviction; and the repealing ſtatutes took not away that which was grounded on a writ at common law.

* Burnet, vol. 2, p. 112.

However, two years after the death of Joan of Kent, one George Van Pare, a Dutchman, was accuſed of hereſy, in maintaining, "That God the Father was only God, and that Chriſt was not very God." The threats of the dreadful cataſtrophe that would be the conſequence of his obſtinacy had no effect upon him; he refuſed to abjure, which produced his condemnation; and, on the twenty-fifth day of April, 1555, he was burned at Smithfield.—No martyr ever ſuffered with greater conſtancy of mind;—he kiſſed the ſtake and faggots that were to conſume him. "Of this Pare, (ſays Biſhop Burnet), I find a *Popiſh* writer ſaying, that he was a man of ſo wonderful a ſtrict life, that he uſed not to eat above once in two days, and, before he did eat, would lie ſome time, in his devotion, proſtrate on the ground *." There was no part of Cranmer's conduct that expoſed him more to cenſure than the death of theſe two perſons: and in all the books publiſhed in Mary's days, juſtifying her ſeverity againſt the Proteſtants, theſe inſtances were conſtantly reſorted to: and, indeed, as

* Burnet, vol. 2, p. 112.

nothing

nothing is ſo contrary to every idea of religion than ſuch barbarity, it is lamentable to think that Roman Catholicks ſhould *ever* have had occaſion to ſay with a ſneer, " The good and meek Reformers were capable of putting men to death for what they thought to be heretical opinions, who were otherwiſe of the moſt innocent lives, and a real ornament to humanity." There were many who did not heſitate to ſay, that the primate had conſented both to the death of Lambert and of one Anne Aſkew, who both ſuffered in the laſt reign, for the ſame opinions which he now maintained; and when he was brought to the ſtake himſelf afterwards, they exulted at his death, ſaying, it was a juſt retaliation upon him *.

Theſe rigorous methods of proceeding ſoon brought the whole nation to a conformity, ſeeming or real, with the new doctrine and the new liturgy. The Lady Mary alone continued to adhere to the Maſs, and refuſed to admit the eſtabliſhed mode of worſhip. When preſſed and menaced on this head, ſhe applied

* Burnet, vol. 2, p. 112.

to the Emperor; who uſing his intereſt with Sir Philip Hobby, the Engliſh Ambaſſador, procured her a temporary connivance from the Council*.

Whilſt all England ſeemed to receive with ſubmiſſion whatever came from the Court, the leaven of diſcontent was fermenting in the kingdom, and threatened to produce great alterations. When the monaſteries were ſuppreſſed, there were a great number of monks who were forced to have recourſe to labour to gain a ſubſiſtence; ſo that every kind of buſineſs was over-ſtocked. The lands of the monaſteries had formerly been farmed out to common people, ſo as to employ a great number of hands; and the rents being moderate, they were enabled to maintain their families on the profits of agriculture; but now, theſe lands being poſſeſſed by the nobility, the rents were raiſed; and the farmers, perceiving that wool was a better commodity than corn, turned all their fields into paſture ground. The arts of manufacture had made greater progreſs in

* Rap. vol. 2, p. 14. Hume, vol. 4, p. 325.

England,

England, than the knowledge of agriculture. A great demand aroſe for wool both at home and abroad, which occaſioned whole eſtates to be laid waſte by encloſures.—The poor tenants, regarded as a uſeleſs burden, were expelled their habitations. Even the cottagers, deprived of the commons on which they formerly fed their cattle, were reduced to miſery; and a decay of people, as well as a diminution of the former plenty, was remarked in the kingdom. The price of corn increaſed, to the unſpeakable hardſhip of the lower claſs of people; and, as fewer hands were required to manage paſture grounds, a great number of poor people were utterly deprived of ſubſiſtence, while the nation was filled with murmurs and complaints againſt the nobility, who were the ſources of this misfortune. The Protector, who was of a mild and compaſſionate diſpoſition, heartily eſpouſed the cauſe of the people, by his endeavours to redreſs their complaints. He appointed commiſſioners to examine whether or not the poſſeſſors of church-lands fulfilled the conditions on which thoſe lands had been ſold by the crown;—he demoliſhed a royal park at Hampton Court, of which the inhabitants

inhabitants of that diſtrict complained, and took ſeveral other ſteps for the relief of the common people, which entailed upon him the hatred of the nobility and gentry, whoſe intereſt it was to continue theſe abuſes. In the laſt ſeſſion of parliament, the Lords had projected an act, empowering the poſſeſſors of church-lands to farm them in any manner they ſhould think proper; but the bill was thrown out by the Commons, which, however, did not prevent the nobility and gentry from incloſing their lands. The common people, irritated by this conduct, and dreading that a ſettled deſign was formed to reduce them to ſervitude, ſought for a remedy by force of arms *.

Without adopting any ſettled plan for obtaining redreſs of theſe grievances, or conſidering the danger of embarking in open rebellion, they flew to arms in a tumultuous manner in ſeveral counties, and began to pull down the incloſures. But they were ſoon attacked by the regular forces of government, who ſlew

* Burnet, vol. 2, p. 114. Rapin, vol. 2, p. 14.

ſome

ſome of them and eaſily diſperſed the reſt; yet this diſaſter did not hinder the people from riſing in other places, but, by the interpoſition of moderate and prudent men, the calamities of civil war were, for the preſent, prevented. This calm was, however, ſoon interrupted by commotions of a more dangerous nature, which aroſe from the ſame cauſe, in Oxfordſhire, Devon, Norfolk, and Yorkſhire. The inſurrection in Oxfordſhire was ſoon quelled by a force of five hundred men, brought againſt them by Lord Gray. Some of them were killed, and others taken and executed by martial law, as being in a ſtate of war; and the greateſt part ran home to their reſpective habitations. The inſurgents of Devonſhire, amounting to ten thouſand, were headed by one Humphrey Arundel, an experienced officer, and the Mayor of Bodmyn, and encouraged by the ſermons of the pariſh prieſt of Stampford Courtenay, who had the addreſs to give their diſcontents a turn towards religion. Their demands were, that the maſs ſhould be reſtored; half of the abbey lands reſumed; that the ſix articles ſhould be again in force; that holy water, holy bread, and palms,

ſhould

ſhould be again uſed; and images ſet up with all other ancient ceremonies; that all preachers, in their ſermons, and prieſts in the maſs, ſhould pray for the ſouls in purgatory; that the Bible ſhould be called in, ſince otherwiſe the clergy could not eaſily confound the hereticks; and that all other of their grievances ſhould be redreſſed *.

The miniſtry rejected theſe demands in a lofty and threatening ſtile, commanded the rebels to diſperſe, and, in the manifeſto which they publiſhed on this occaſion, they promiſed them pardon on their immediate ſubmiſſion. Enraged at this diſappointment, they marched to Exeter, carrying before them croſſes, banners, holy water, candleſticks, and other implements of ancient ſuperſtition; together with the Hoſt, which was conveyed by a prieſt on a cart, that all eyes might ſee it.—The citizens reſiſted them with great courage, and the rebels, as they had no cannon, attempted to take the place, firſt by eſcalade, then by mining, but were repulſed in every attempt.

* Burnet, vol. 2, p. 115, 116. Rapin, vol. 2, p. 15.

John

John Lord Ruſſel had been ſent againſt them with a ſmall force, but not thinking himſelf ſufficiently ſtrong to attack them, he took up his quarters at Honiton, till he ſhould receive freſh ſuccours. Theſe having arrived, he reſolved to attempt the relief of Exeter, which was reduced to ſuch extreme famine, that thoſe within had been obliged to eat their horſes. He attacked the rebels—drove them from their poſts—did great execution upon them, both in the action and purſuit; and took many priſoners. Arundel and the other leaders were ſent to London, tried, and executed. Many of the inferior ſort were put to death by martial law. The vicar of St. Thomas, an active partizan, was hanged upon the top of his own ſteeple, arrayed in his popiſh weeds, with his beads at his girdle *. The Mayor of Bodmyn, who had countenanced the complaints of the inſurgents, was on that account treated with a ſingular baſeneſs, which could only be equalled by the wanton cruelty of Colonel Kirke, whoſe name hiſtory has conſigned to infamy.—

* Burnet, vol. 2, p. 119.----Rapin, vol. 2, p. 16.---Hume, vol. 4, p. 330, 331.

Sir Anthony Kingſton, provoſt-marſhal of the king's army, ſent him word he would come and dine with him on a particular day. The Mayor received him and his company with the greateſt politeneſs. A little before dinner, this monſter of nature took the Mayor aſide, and bid him get a pair of gallows erected againſt they had dined, for execution muſt that day be done in the town. His orders were obeyed; and, after dinner, the Mayor ſhewing him the gallows, Kingſton aſked him, whether he thought them ſtrong enough?—and upon his ſaying, Yes, doubtleſs; he bid him go up and try;—and cauſed him to be executed in the preſence of his gueſts *.

The inſurrection in Norfolk roſe to a ſtill greater height, and was attended with greater acts of violence. The populace were at firſt excited, as in other places, by complaints againſt encloſures; but finding their numbers amount to twenty thouſand, they increaſed in their pretenſions. As they conſidered the gentry to be the authors of their grievances, and

* Rap. vol. 2, p. 16, n. 6.

as

as a deſcription of men who wiſhed to enſlave them, they inſiſted, among other demands, that the gentry ſhould be ſuppreſſed, that new counſellers ſhould be placed about the King, but ſet up no pretences with regard to religon.

The male-contents took the field on the 6th day of July, 1549, under the command of one Ket a tanner, and marched to Mouſehold-hill near the city of Norwich, where Ket aſſumed to himſelf the power of Judicature, and under an old oak, called from thence the Oak of Reformation, ſummoned the gentry to appear before him, and adminiſtered ſuch juſtice as ſeemed to him to be ſanctioned by the neceſſity of the times, and the ſenſe of the people. The Marquis of Northampton was firſt ordered againſt him; but met with a repulſe, in an action where Lord Sheffield was ſlain. The Protector not caring to appear in perſon in ſo diſagreeable a buſineſs, ſent the Earl of Warwick againſt the rebels, at the head of ſix thouſand men levied for the wars with Scotland. Warwick conducted himſelf like a wiſe general. Having tried ſome ſkirmiſhes with the rebels, he at laſt

made a general attack upon them, and put them to flight. Two thouſand fell in the action and purſuit. Ket was hung in chains on Norwich caſtle next January; nine of his adherents met with the ſame fate on the boughs of the Oak of Reformation. Some rebels in Yorkſhire learning the cataſtrophe of their companions, accepted the offers of pardon, and threw down their arms. Theſe inſurrections being effectually ſuppreſſed, the Protector, who had acted during the whole diſturbance with remarkable lenity, moved in council, that a general and free pardon ſhould be immediately proclaimed, to reſtore the peace of the kingdom. This was, however, greatly oppoſed by many of the council, who thought it better to accompliſh their purpoſes, by keeping the people under the laſh, than by indulging them with ſo unlimited a mercy.—But the Protector judging that the ſtate of affairs required it, in virtue of his patent, publiſhed a general amneſty, excepting only a few priſoners who had been principal actors in the rebellion *. By this lenity he inflamed

* Burnet, vol. 2, p. 119, 120. Rapin, vol. 2, p. 16. Hume, vol. 4. p. 332.

the

the hatred of the nobility, which he had already incurred, as well as of ſome privy counſellors, who were offended to ſee themſelves only conſulted for form's ſake, and that their opinions were of no weight.

Envious of the popularity which the Protector had juſtly acquired, as well as of the power which his patent inveſted him with, many of the nobility entered into a conſpiracy to deprive him of his exorbitant power, and reduce him to an equality with themſelves. Moſt of the council ſeparated from him, and began to act in virtue of their own authority. They aſſembled at Ely-houſe as the King's Council, and entered their proceedings in the council-book, as if the power of the Protector had already been annulled or expired. The imprudencies of the Protector were magnified by his enemies into the greateſt crimes. The city of London declared againſt him; and the Lieutenant of the Tower, of whom he thought himſelf ſure, forſook him like a traitor, and took part with his enemies. Somerſet made ſeveral attempts to maintain his authority, and defeat the operations of ſo powerful

powerful a combination; but finding the defection too general to be reſiſted, he reſigned the Protectorſhip, and was, with ſeveral of his friends, committed to the Tower.

The Earl of Warwick, who had always been a mortal enemy to Somerſet, was on his downfal created Duke of Northumberland.—His ambition was unbounded, and he conſidered the Duke of Somerſet, who had recovered his liberty, and was readmitted into the council, as an obſtacle to his further advancement. He therefore formed a deſign to deſtroy that unhappy nobleman: with that view he ſecretly gained over many of his friends;—he ſometimes terrified him with the appearance of danger, and at other times provoked him by ill uſage. The unguarded Somerſet often broke out into menacing expreſſions againſt Northumberland; at other times he formed raſh projects, which he immediately abandoned. His treacherous confidents carried to his enemy every paſſionate word which eſcaped from his lips, and revealed the ſchemes which they themſelves had firſt ſuggeſted to him. The ſubtle Northumberland having ripened

ripened his plot by their treachery, the Duke of Somerſet, and ſeveral of his friends and ſervants, were in one night * arreſted and taken into cuſtody; and the next day his Dutcheſs was alſo thrown into priſon. A looſe accuſation was laid to his charge by Sir Thomas Palmer, who alleged that he had formed a deſign to raiſe an inſurrection in the North; to attack the *Gens des Armes* on a muſter-day; to ſecure the Tower, and to raiſe a rebellion in London. But what appeared to be the only probable accuſation of Palmer, who had acted all along as a ſpy upon Somerſet, was, that he had once laid a project for murdering Northumberland and the Lords Northampton and Pembroke at a banquet, which was to be given them by Lord Paget.

Somerſet was brought to his trial before the Marquis of Wincheſter, created High Steward; twenty-ſeven peers compoſed the jury, among whom were Northumberland, Pembroke, and Northampton, whom decency ſhould have hindered from acting as judges

* October 16, 1551.

in

in the trial of a man that appeared to be their capital enemy. Somerſet was, on the firſt day of December, accuſed of high-treaſon on account of the projected inſurrections, and of felony in laying a deſign to murder privy-counſellors, agreeable to an act of parliament, which we ſhall come to in due time, whereby it was declared, that the aſſembling of twelve perſons to kill a privy-counſellor, and on proclamation not diſperſing themſelves, amounted to treaſon; and if they had by any malicious artifice been brought together, and being warned did not diſperſe, it was held to be felony without benefit of clergy or ſanctuary. Some more regularity was obſerved in the management of this proſecution than had uſually been employed in like caſes. The witneſſes were examined by the privy-counſel, and though they were neither produced in court, nor confronted with the priſoner, circumſtances required by the ſtricteſt principles of equity, their depoſitions were given in to the jury. The proof ſeems to have been defective with regard to the treaſonable part of the charge; and Somerſet's defence was ſo ſatisfactory, that the peers gave a verdict in his favour.

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The intention alone of his aſſaulting the privy-counſellors was ſupported by ſome colour of evidence; ſo that the jury brought him in guilty of felony. The priſoner himſelf confeſſed, that he had expreſſed his intention of murdering Northumberland, and the other lords; but had not formed any reſolution on that head; and when he received ſentence, he aſked pardon of thoſe peers, for the deſigns which he had harboured againſt them. When the jury pronounced him not guilty of the treaſon, the people, who were much concerned for his preſervation, ſhouted for joy, ſo loud, and ſo long, that they were heard at Charing-croſs; but their tranſports were turned to grief, upon hearing the reſt of the verdict, by which he was found guilty of the felony, and ſentenced to loſe his life for that crime. All men murmured againſt the verdict of the jury; they deemed it to be a great ſtretch of power, ſeeing that after he had been acquitted of the treaſon, and there being no felonious action done, but only the intention of one, and that only of impriſoning a peer, proved, they ſhould venture to adjudge him to die, eſpecially a nobleman ſo nearly related to the king.

Care, however, was taken by Northumberland's emiſſaries, to prepoſſeſs the young king againſt his uncle; and leſt he ſhould relent, no acceſs was given to any of Somerſet's friends, and the prince was kept from reflection, by a continual ſeries of occupations and amuſements. At laſt the priſoner was brought to the ſcaffold on Tower-hill, amidſt a vaſt concourſe of ſpectators, who bore him ſuch ſincere good will, that when Sir Anthony Brown came riding towards the place of execution, there was a general ſhout of Pardon! pardon! God ſave the King;—but when the people found theſe their fond hopes were diſappointed, they melted into ſorrow. Many of them ruſhed in to dip their handkerchiefs in his blood, which they long preſerved as a precious relique, and ſome of them ſoon after, when Northumberland met with a like doom, upbraided him with his cruelty, and diſplayed to him theſe ſymbols of his crime. One lady retained ſo lively a ſenſe of the virtues of Somerſet, that when Northumberland was brought through the city as a ſtate priſoner, ſhe called aloud to him, ſhaking one of theſe bloody handkerchiefs, "Behold," ſaid ſhe,

"the

" the blood of that worthy man, that uncle
" of that excellent king, which was ſhed by
" thy malicious practice, doth now begin ap-
" parently to revenge itſelf on thee *."

The Duke of Somerſet was a nobleman of great virtues, eminent for piety, humble and affable in his greatneſs, ſincere and candid in all his tranſactions. His endeavours were conſtantly exerted in behalf of the poor and the oppreſſed; and to ſum up his character, he had as many virtues, and fewer faults, than moſt great men who have been unexpectedly raiſed to ſo elevated a ſtation.

A ſeſſion of parliament was held on the fourth day of November, 1549, but the members inſtead of proving themſelves the guardians of the liberties of the people, and a cheque upon the power of the council, became the ſervile inſtruments and promoters of their authority.

During this ſeſſion a ſevere law was paſſed againſt riots. It was declared to be high trea-

* Burnet, vol. 2, p. 136, 137, 184, 185. Hume, vol. 4, p. 337, 352, 353.

ſon for twelve perſons, or above, being aſſembled together, to attempt to kill or impriſon any of the king's council *, or to alter any laws, and to continue together by the ſpace of an hour, being commanded by a Juſtice of Peace, Mayor, Sheriff, &c. to return. And it was made felony for twelve perſons, or above, to practiſe to deſtroy any park, pond, conduit, or dove-houſe, or to have common or way in any ground; or to pull down any houſes, barns, or mills; or to burn any ſtack of corn; or to abate the rents of any lands, or the prices of any victual; and to continue together an hour, being commanded by a Juſtice of Peace, Sheriffs, Bailiffs, &c. by proclamation to return †.

On the 14th day of November the Biſhops made a heavy complaint to the Lords, of the abounding of vice and diſorder, and that their power was ſo abridged, they could puniſh no ſin, nor oblige any perſon to appear before them, nor put in practice the diſcipline of the

* By this law the Duke of Somerſet loſt his life.

† 3 and 4 Ed. 6. cap. 5. Exp. 7 Ed. 6. cap. 11. and Rep. 1. Mar. 1. ſeſſ. 2. cap. 12.

church.

church. A bill was therefore brought in, but rejected at the firſt reading, becauſe it ſeemed to give the Biſhops too much power, and would prove more oppreſſive than confeſſion, penance, and all the clerical inventions of the Romiſh ſuperſtition. This matter being diſcuſſed, a law was paſſed, enacting, That the King, during three years, ſhould have authority, by the advice of his council, to name thirty-two perſons to examine the eccleſiaſtical laws, and to gather and compile ſuch laws, as ſhould be thought to him, his council, and them, convenient to be practiſed within the realm in all ſpiritual courts; ſo that any law to be ſet forth were not contrary to any common law or ſtatute of the kingdom*. So implicit a confidence did the parliament repoſe in the crown! without being at the pains to reflect, that all their liberties and properties might be affected by the exerciſe of ſuch unlimited authority.

While the zeal of the council puſhed them on to root out Popery, and eſtabliſh the Re-

* 3 & 4 Edw. VI. cap. xi. Exp, 25 Hen. VIII. c. 19. 27 Hen. VIII. c. 15. 35 Hen. VIII. c. 16.

formation

formation on a laſting baſis, they were not, however, unmindful of the intereſts of the kingdom.—The commerce of the nation was at that time the object of very little attention or ſtudy. The trade of England had anciently been carried on altogether by foreigners, chiefly the inhabitants of the Hanſe-towns, or Eaſterlings, as they were called; and in order to encourage theſe merchants to ſettle in England, they had been erected into a corporation by Henry III. had obtained a patent, were endowed with privileges, and exempted from ſeveral heavy duties paid by other aliens. So ignorant were the Engliſh of commerce, that this company, uſually denominated the Merchants of the Still-Yard, engroſſed, even down to the reign of Edward, almoſt the whole foreign trade of the kingdom; and as they naturally employed the ſhipping of their own country, the navigation of England was by this means greatly injured. It was therefore thought proper, by the council, to ſeek pretences for annulling the privileges of this corporation; privileges which put them nearly on an equal footing with Engliſhmen in the duties which they paid; and as ſuch patents were

were, during that age, granted by the abſolute power of the king, men were the leſs ſurprized to find them revoked by the ſame authority. This reſolution of the council was encouraged by the complaints of the Merchant Adventurers, who repreſented that their trade would be utterly ruined while the Still-Yard was ſuffered to exiſt; whereupon the council took away their charter, and diſſolved the company, not however without great oppoſition from the Still-Yard men. Several remonſtrances were made againſt this innovation, by Lubeck, Hamburgh, and other Hanſe towns; but the council perſevered in their reſolution, and the good effects of it ſoon became viſible to the nation. The Engliſh merchants, by their ſituation as natives, had advantages above foreigners in the purchaſe of cloth, wool, and other commodities; though theſe advantages had not hitherto been ſufficient to rouſe their induſtry, or engage them to become rivals to this opulent company.—But when aliens-duty was alſo impoſed upon all foreigners indiſcriminately, the Engliſh were tempted to enter into commerce, and a

ſpirit

ſpirit of induſtry began to appear in the kingdom *.

About the ſame time a treaty was made with Guſtavus Ericſon, king of Sweden, by which it was ſtipulated, that if he ſent bullion into England, he might export Engliſh commodities without paying cuſtom; that he ſhould carry bullion to no other prince; that if he ſent ozimus, ſteel, copper, &c. he ſhould pay cuſtom for Engliſh commodities as an Engliſhman; and that if he ſent other merchandiſe he ſhould have free intercourſe, paying cuſtom as a ſtranger. The bullion ſent over by Sweden, though it could not be in great quantity, ſet the mint at work. Good ſpecie was coined, and much of the baſe metal formerly iſſued was recalled; a circumſtance which tended extremely to the encouragement of commerce †.

A ſeſſion of parliament was held on the 23d day of January, 1551, in which farther

* Burnet, vol. 2, p. 207, 208. Rap. vol. 2, p. 25. Hume, vol. 4, p. 349,

† Ibid. 350.

advances

advances were made towards eſtabliſhing the Reformation. An act was paſſed, "For the uniformity of ſervice, and the adminiſtration of ſacraments, throughout the realm." It was thereby enacted, that every perſon ſhould reſort to the pariſh church, or chapel, upon Sundays and holidays; that thoſe who came not to church, ſhould be puniſhed by the cenſures of it; and that penalties were to be inflicted upon thoſe who went to hear, or were preſent at any other common prayer, or ſacraments, not tolerated by law *.

On the eighth day of February, the miniſtry introduced a bill into the Houſe of Lords, renewing thoſe rigorous ſtatutes of treaſon, which had been abrogated in the beginning of this reign; and though the peers, by their high ſtation, ſtood moſt expoſed to tempeſts of ſtate, yet had they ſo little regard to public ſecurity, or even to their own true intereſt, that they all agreed to it, except the Lord Wentworth. It was ſent down to

* 5 & 6 Edw. VI. cap. 1. This act is repealed by the 1 Mary, ſeſſ. 2, cap. 2, which is repealed by 1 Eliz. c. 2, and 1 James, c. 2, ſec. 48; and this act is now made perpetual by 5 Ann, c. 5, as to the eſtabliſhment of the church.

the Commons, where it was long debated; and many ſevere expreſſions were caſt upon thoſe at the head of affairs. The Commons at laſt rejected the bill, and then drew a new one, which paſſed into a law. By it they enacted, that if any perſon ſhould affirm, that the king, or any of his heirs, named in the ſtatute of the 35th of his father's reign, was an heretic, ſchiſmatic, *tyrant*, *infidel*, or uſurper of the crown, they were, for the firſt offence, to forfeit their goods and chattels, and be impriſoned during pleaſure; for the ſecond ſhould incur a *premunire*; for the third be attainted of treaſon. And it was further declared, that the adviſedly publiſhing or affirming thereof be adjudged high treaſon, and ſubject the party to the loſs of his goods, lands, and tenements; that thoſe who ſhould keep any of the king's caſtles, fortreſſes, or holds, within the realm, or in any other of the king's dominions, or detain or keep any of his ſhips, artillery, or other munitions or fortifications of war, ſix days after they were lawfully required to deliver them up, ſhould be guilty of treaſon, and that offenders might be proceeded againſt for treaſons committed out

out of the kingdom as well as in it*. It may be worthy of remark, that the king and his next heir, the Lady Mary, were profeſſedly of different religions; and of religions which threw on each the imputation of hereſy, ſchiſm, idolatry, blaſphemy, and all the opprobrious epithets that religious zeal has invented. By this ſtatute it was hardly poſſible for the people, if they diſcourſed upon the points contained in it at all, not to fall into the crime ſo ſeverely puniſhable by it; and the jealouſy of the Commons for liberty, though it led them to reject the bill of treaſons ſent to them by the Lords, ſeems in this inſtance not to have been very vigilant or clear-ſighted.

They, however, added a proviſo to it, which was of more importance than the bill itſelf—That no perſon ſhould be attainted of treaſon but upon the teſtimony of two lawful accuſers; which accuſers, on the arraignment of the party accuſed, ſhould be brought in perſon before him, and maintain to his face the charge laid in the indictment. This excellent

* 5 & 6 Edw. VI. cap. xi.

clauſe ſeems to have had a retroſpect to the trial of the Duke of Somerſet, on which the witneſſes were not confronted with his Grace, and by that means he was deprived of what few falſe witneſſes have ever been able ſucceſſfully to ſtand, a ſtrict croſs examination. Yet the Lords moſt unaccountably ſcrupled, for ſome time, to allow this clauſe, though conſiſtent with the moſt obvious principles of juſtice. But the members of that houſe truſted for protection to their preſent perſonal intereſt and power, and neglected the nobleſt and moſt permanent ſecurity—that of laws. On the fifth of March the Lords brought forward a bill for the relief of the poor; but the Commons being diſpleaſed that a bill to tax the ſubject ſhould originate in the upper houſe, framed a new act to the ſame purpoſe. By it the church-wardens were empowered to gather charitable collections; and if any refuſed to give, or diſſuaded others from it, the biſhop of the dioceſe was empowered to proceed againſt them *. Such large diſcretionary powers entruſted to the prelates, ſeem as pro-

* 5 & 6 Edw. VI. c. 2. Rep. 14 Eliz. c. 5. Exp.

per

per an object of jealouſy as the authority aſſumed by the peers.

The parliament alſo gave another inſtance of their unuſual confidence in the biſhops, by empowering them to puniſh every perſon with the cenſures of the church, or by penance, who did not keep Sundays and holidays *. But theſe were unguarded conceſſions granted to the church. The general humour of the age rather led men to bereave the eccleſiaſtics of all power, and even to pillage them of their property. Many of the clergy were about this time reduced to the moſt deplorable poverty; to obtain a livelihood, ſome of them were obliged to turn carpenters and taylors, and ſome kept ale-houſes †.

A very ſalutary act was paſſed, "Againſt buying and ſelling of offices." It was enacted, that if any perſon bargain or ſell any

* 5 & 6 Edw. VI. cap. 3. Rep. by 1 Mar. ſec. 2, cap. 2, and which alſo ſtands Rep. by 1 Ja. 1. cap. 25, ſec. 48.

† Burnet, vol. 2. p. 202.

office,

office, or deputation of an office, to the intent that any perſon ſhould exerciſe ſuch office or deputation of office, which ſhould in any wiſe concern *the adminiſtration of juſtice*, or the receipt or payment of the king's treaſure, rent, revenue, account, auditorſhip, or ſurveying of any of his majeſty's honours, caſtles, manors, lands, tenements, woods, or hereditaments; or any of the king's cuſtoms; or the keeping of any of the king's towns, caſtles, or fortreſſes, or which ſhould concern any clerkſhip to be occupied in any court of record wherein juſtice ſhould be adminiſtered; ſuch perſons ſhould not only forfeit all their right and eſtate in any of the ſaid offices, but be deprived of the benefit ariſing from the diſpoſal of any of them; and declaring all bonds, contracts, and agreements regarding the ſame, to be void *. Another law was made againſt taking

* 5 & 6 Edw. VI. cap. 16.

Not long ſince, Mr. Collins, a lawyer of Providence, one of the Bahamas, ſued the late Governor Brown for ſeveral hundred pounds. It ſeems, violent diſputes had ariſen between Mr. Brown, and the governor who ſucceeded him. Colonial governments are often the ſeats of faction; and his Majeſty's ſervice is frequently ſacrificed to empty pride, and perſonal reſent-

taking any intereſt for money, upon pain of forfeiting the ſum lent and the increaſe, impriſonment and fine, at the king's pleaſure *.

reſentment. Brown laid his grievances before the board of trade, and brought home Collins, who was one of the privy-council of the iſland, along with him, to bear teſtimony in his vindication. It was ſtipulated between them, before they left Providence, that Brown ſhould either give Collins a ſum of money adequate to his loſs of time, or procure him an appointment under government worth 200l. a-year. Brown, by dint of intereſt, obtained for him the office of chief juſtice of theſe iſlands. Collins accepted it; but on applying for his ſalary, was refuſed payment of it, on the pretence, if I remember right, of the diſturbances then prevailing in America. Mr. Collins therefore reſigned his chief juſticeſhip, as he could not live on the food of the cameleon. Brown inſiſted that the agreement was fulfilled on his part, by the procurement of the office; but Collins being of a different mind, cauſed the governor to be arreſted, at an unlucky time, juſt as he was ſitting down to dinner with a large company. The affair came to trial at Guildhall. Brown contended, by the late Lord Aſhburton, then Mr. Dunning, that procuring Collins the dignified office of chief juſtice of all the Bahamas, put an end to the cauſe; but Lord Mansfield was of another opinion, alledging that the procurement of ſuch an office, in the way in which it appeared to the court, "was corrupt by the ſtatute of Edward VI." and the jury agreeing with his lordſhip, the verdict went for Mr. Collins. How many illegal contracts of this kind would be liable, at this moment, to be vacated, were they properly inquired into?

* 5 & 6 Edw. VI. cap. xx. Rep. by 13 Eliz. cap. 8.

This

This act had in it a little of the tincture of ancient ſuperſtition; but being found extremely hurtful to commerce, it was repealed in the more enlightened times of Queen Elizabeth.

In the mean while Northumberland, whoſe rapacity was exceſſive, formed a project to deprive Tonſtal of his biſhopric of Durham, and to ſeize upon the revenues. Tonſtal had conſtantly oppoſed all innovations in religion, though when they became laws, he ſilently obeyed them. He was a man of probity, moderation, and humanity; qualities which protected him from any ill uſage during the adminiſtration of Somerſet, that real man of the people. But he experienced a very different treatment when Northumberland came into power. That nobleman threw him into the Tower, on pretence of miſpriſion of treaſon; though this violent conduct was too thinly veiled, to conceal the duke's aim, which was, not ſo much to puniſh the alledged crime of the prelate, as toobtain for himſelf the dignity of palatine of Durham, that was annexed to the biſhopric. A bill of attainder paſſed the Houſe of Lords, with the oppoſition only of Lord

Lord Stourton, a zealous catholic, and of Cranmer, who always bore a ſincere friendſhip to the Biſhop of Durham. But when the bill was ſent down to the Commons, they nobly rejected it, for the beſt of all reaſons, becauſe the deſign was to condemn the Biſhop, without confronting him with his accuſers *.

Northumberland and his creatures aſcribed this equity, ſo unuſual in the parliament during that age, not to any regard for liberty or juſtice, but to the ſuperior influence of the friends of Somerſet, in a Houſe of Commons choſen during his adminiſtration. They were confirmed in this notion, upon finding that a bill ratifying the attainder of Somerſet and his adherents, was alſo rejected by the Commons, though it had paſſed the Houſe of Lords. The Commons, on the 28th day of March, 1552, divided upon the bill;—ſixty-eight were for it; and ſixty-nine voted againſt it †. Northumberland perceiving he was not likely to carry his meaſures with a parliament ſo little

* Burnet, vol. 2, p. 195. Rapin, vol. 2, p. 24. Hume, vol. 4, p. 359.

† Burnet, vol. 2, p. 194.

inclined to his intereſt, formed a reſolution for its diſſolution; and it was accordingly diſſolved on the 15th day of April, after it had ſat from the beginning of this reign.

In the interval between the diſſolution of the laſt and the beginning of the new parliament, Northumberland, to enſure himſelf of a Houſe of Commons fit for his purpoſes, ventured on an expedient, which could not have been practiſed, or even thought of, in an age ſuſceptible of the leaſt idea of liberty.—He engaged the king to write circular letters to all the Sheriffs, in which he injoined them to inform the freeholders, that they were required to chuſe men of knowledge and experience for their repreſentatives. After this general exhortation, the king continued in theſe words; "And yet, nevertheleſs, our pleaſure "is, that where our privy-council, or any of "them, ſhall, on our behalf, recommend, "within their juriſdiction, men of learning "and wiſdom; in ſuch caſes, their directions "ſhall be regarded and followed, as tending "to the ſame end which we deſire; that is, "to have this aſſembly compoſed of the per-

"ſons

" ſons in our realm, the beſt fitted to give " advice and good counſel *."

Several letters were ſent from the king, recommending members to particular counties; Sir Richard Cotton to Hampſhire; Sir William Fitzwilliams, and Sir Henry Neville, to Berkſhire; Sir William Drury, and Sir Henry Benningfield to Suffolk, &c. But though ſome counties only received this ſpecies of *congé d' elire* from the king; the recommendations from the privy-council and the counſellors, we may fairly preſume, would extend to the greater part, if not the whole of the kingdom.

The Duke of Northumberland found the new parliament, which was aſſembled on the firſt day of March, 1553, as obſequious as he could have wiſhed. They granted to the king two tenths and two fifteenths, with a ſubſidy for two years, on a ſuppoſition, as was alleged in the preamble to the bill, " That Somerſet " had involved the king in wars, waſted his " treaſure, engaged him in much debt, em-

* Hume, vol. 4, p. 358; who quotes Strype as his authority.

" baſed the coin, and given occaſion to a moſt " terrible rebellion *." They ſuppreſſed, by act of parliament, the Biſhopric of Durham, in lieu of which one was founded in the ſame place, and another at Newcaſtle †; but the dignity of palatinate was conferred upon Northumberland ‡. Tonſtal had been previouſly deprived of his biſhopric by the ſentence of lay commiſſioners, who were appointed to try him. The proceedings againſt him ſeem to have been carried on in the moſt arbitrary manner: he had neither counſel aſſigned him when brought to trial, nor convenient time allowed him to prepare for his defence; and from the time of his being put out of his biſhopric he was kept a priſoner, till Queen Mary ſet him at liberty §.

The king having granted a general and free pardon ||, diſſolved the parliament, after a ſhort ſeſſion of one month.

* 7 Edw. VI. c. xii. Exp. 1 Mary, ſeſſ. 2, c. 17.
† Ibid. c. x. Rep. 1 Mary, ſeſſ. 3, c. 3.
‡ Burnet, vol. 2, p. 216.
§ Ibid. || 7 Edw. VI. c. 14.

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The young prince, who had been for ſome time indiſpoſed, in conſequence of the meaſles and ſmall-pox *, which left a diſorder on his lungs, ſigned an order for the viſitation of the churches, that their ſuperfluous plate and ornaments might be converted to the uſe of the poor; but ſuch fraud and extortion were practiſed in this inquiry, that the poor reaped very little benefit from the king's charitable intention. His diſtemper now degenerated into a confirmed conſumption; and many people did not ſcruple to inſinuate, that the Duke of Northumberland had tampered with his conſtitution. Edward, who was ſenſible of his danger, expreſſed great ſubmiſſion to the will of God, and bore the proſpect of death with uncommon fortitude. The chief concern he manifeſted, was for the ſtate of religion; and upon that account, he ſaid, he was deſirous of life—probably foreſeeing the alteration of it on the ſucceſſion of his ſiſter Mary. He was greatly diſturbed by this reflection; and the Duke of Northumberland did not fail to feed

* "April, 2. I fell ſick," ſays the king, "of the "meaſles and ſmall-pox." King Edward's Journal, in Burnet, p. 49.

his

his diſquiet, by deſcribing the ſcenes of perſecution that would be acted under a Popiſh ſovereign. His deſign was to pave the way for Edward's ſetting aſide the ſucceſſion.—When the phyſicians deſpaired of the king's life, he was committed to the care of a confident woman, who undertook to cure him by means which ſhe would not diſcover. No hopes of his recovery now remaining, the Duke would no longer delay the marriage of his fourth ſon, Lord Guildford Dudley, with the Lady Jane Gray, eldeſt daughter of the Duke of Suffolk and Frances Brandon, mentioned in Henry's will, as next in ſucceſſion to his own daughters. At the ſame time Jane's ſecond ſiſter, Catherine, eſpouſed Lord Herbert, the Earl of Pembroke's eldeſt ſon; and the third, the Lady Mary, who was crooked, was married to Martin Keys, the king's groom-porter *.

Theſe marriages being ſolemnized, the Duke reſolved to take the firſt opportunity of executing the other part of his project. One day, when the king lamented his ſiſter's averſion to the reformed religion, Northumberland told him there was only one way of preventing the

* Burnet, vol, 2. p. 222.

misfor-

misfortune which threatened his country, and that was, by excluding the Princeſs Mary from the ſucceſſion, and transferring the crown to the Lady Jane Gray. Edward bore a tender affection to the Princeſs Elizabeth, who was liable to no ſuch objection; but Northumberland repreſented, that ſhe could not avoid ſharing her ſiſter Mary's fate, becauſe the only pretence they could uſe againſt Mary, was her being illegitimate, which equally affected Elizabeth, as both of their marriages had been declared unlawful by act of parliament. The king gave way to this expedient. The intereſt of religion was his prevailing care, which on this occaſion abſorbed every other conſideration; and he entertained the moſt tender regard for the Lady Jane Gray, who poſſeſſed all the amiable accompliſhments of mind and perſon. Three of the Judges, with the king's attorney and ſolicitor, were commanded to draw up an act to convey the crown to the Lady Jane Gray, on the death of Edward.—They at firſt refuſed to comply with this order, excuſing themſelves by ſaying, that in framing ſuch an act they ſhould ſubject themſelves to the pains and penalties of high treaſon, according to act of parliament; and declared that all the

the Lords would involve themſelves in the like guilt, if they went on with it. Northumberland was ſo incenſed at their refuſal, that he called Montague, the Chief Juſtice of the Common Pleas, a traitor, and threatened all the other Judges; his rage was ſo great that they were apprehenſive of his uſing perſonal violence. At laſt, partly by threats, and partly by letters of pardon granted in their favour by anticipation, they were prevailed on to draw up the act of conveyance, which was ſubſcribed by all the other Judges, except Judge Hales, and all the Members of the privy-council, Cranmer himſelf not excepted *. The king ſtill continued under the regimen preſcribed by the quack-doctreſs who had undertaken his cure; but the diſtemper increaſing every day, ſhe was diſmiſſed and the phyſicians recalled. While death was thus haſtening him to his grave, the Duke of Northumberland, who thought the ſettlement of the crown would ſtill be inſecure, unleſs he could get the princeſſes Mary and Elizabeth into his hands, prevailed on the council to write to them in the king's name, to come and keep him company in his ſickneſs.—But as they were on the

* Burnet, vol. 2, p. 224.

way,

way they heard of his death, by a letter from the Earl of Arundel, who gave the Lady Mary a detail of Northumberland's deſigns with regard to the ſucceſſion; which put a ſtop to their journey, and defeated the ſcheme that had been laid to entrap them.

The young king being ſenſible his end was near at hand, prepared himſelf for that awful event with the utmoſt compoſure.—While he was imploring the forgiveneſs of heaven in ſhort prayers and ejaculations, he perceived that he had been overheard by ſome perſons in the room—He ſeemed at firſt to be troubled at it; but with a cheerful countenance told them he had been praying to God. And ſoon after, being ſeized with the agonies of death, he ſaid to Sir Henry Sidney, who was holding him in his arms, "I am faint—"Lord have mercy upon me, and receive my "ſpirit—" and immediately breathed out his innocent ſoul, at Greenwich, on the ſixth day of July, in the ſeventeenth year of his age, and ſeventh of his reign *.

The reign of this pious young prince will always be reckoned a diſtinguiſhed epocha,

* Burnet, vol. 2, p. 224.

both in regard to religious and political liberty. Commerce and civilization were advanced by wiſe and ſalutary laws, in a degree ſuperior to what could naturally be expected under a minor king, whoſe reign was diſturbed by the practices of ambitious men, and by commotions produced by their miſconduct. The ſuperſtition of the church of Rome had received a mortal blow, by the tranſlation of the Bible into Engliſh during the laſt reign. The eyes of the people were opened by the communication of a ſyſtem of religion and morality, of which they had hitherto been unacquainted. Science, by enlarging the mind, detected the vanity and deceit of Popiſh ſuperſtition. Many learned Proteſtant divines, who flouriſhed about this time, as well by their diſcourſes in the pulpit as by the promulgation of their opinions in writing, haſtened the deſtruction of the ancient faith.—The viſitation of the monaſteries brought to light the immoral lives of the Romiſh clergy, and expoſed the abſurdity of their pretended miracles. For every man who takes time to think for himſelf, will be apt to receive with caution every thing which appears to him to be out of the ordinary courſe of nature. And

it

it is to the credit of this reign, that the reformation was compleated with leſs bloodſhed than could be imagined poſſible, at a period when the diſſenting from the religion of the magiſtrate was deemed equally criminal as to queſtion his title, or rebel againſt his authority.

The reign of Queen Mary opened a new and unparalleled change in the affairs of the church. Bigotted in the Catholic faith to the laſt degree of enthuſiaſm, and more cruel in her nature than the moſt ignorant ſavage, ſhe found a parliament who aſſiſted her but too ſucceſsfully in the demolition of the reformed religion eſtabliſhed in her brother's reign.—The whole fabric of the new religion, which teaches mercy and benevolence towards all men, was, in the firſt ſeſſion, deſtroyed by act of Parliament; and the old ſuperſtitions again raiſed on its ruins. Perhaps hiſtory cannot produce a more infamous ſcene of unprovoked cruelty than was exerciſed under the authority of this Queen to bring the converts to reformation back to the Romiſh church. A moſt incredible act of barbarity was committed in Guernſey. A mother and her two daughters were condemned to the ſtake, one of them

being married, and in the laſt month of her pregnancy, was, by the violence of the pain, taken in labour, and produced an infant, which a humane by-ſtander reſcued from the fire.—But, after ſome conſultation, the magiſtrate who ſuperintended the execution ordered the babe to be thrown back into the flames, where it periſhed with the mother. But theſe infernal proceedings, ſo far from checking the growth of reformation, had quite a contrary tendency. The ſurpriſing reſolution with which the martyrs ſuffered the moſt painful death, diffuſed a general notion of their ſanctity, and enhanced the value of the religion which they profeſſed; ſo that this frantic zeal of the Papiſts in a great meaſure contributed to the ſubſequent eſtabliſhment of the reformation. It muſt be, however, acknowledged, that many ſalutary and popular laws in civil matters were made under her adminiſtration; perhaps the better to reconcile the people to theſe bloody meaſures which ſhe purſued for the re-eſtabliſhment of religious ſlavery.

Her ſhort reign was embittered by croſſes, and domeſtic inquietude. She was thwarted by her parliament in temporal affairs; and even

even in ſeveral particulars which related to the church. She was hated and abandoned by Philip her huſband; and curſed with a barren womb. The loſs of Calais, which had been under the Engliſh juriſdiction two hundred years, augmented her torments. The conſciouſneſs of being deteſted by her ſubjects; the dangers to which the Catholic faith would be expoſed on the ſucceſſion of Elizabeth, with the other cauſes of diſcontent, preyed upon her ſoul to ſuch a degree, that ſhe fell into a lingering fever, of which ſhe died, after an unfortunate reign of five years, four months, and eleven days.

The death of Queen Mary (in whoſe reign ſuffered for their opinions two hundred and eighty-four perſons, many of whom were men of high rank) put an end to religious perſecution, and produced happier times under the auſpices of Elizabeth, who aſcended the throne amidſt the univerſal acclamations and good wiſhes of the people; the prieſts and bigotted Papiſts only excepted. The reformation, in the firſt year of her reign, was again reſtored; and all the acts of Parliament which had been made in Mary's reign concerning

cerning religion were annulled. Many ſevere laws were enacted againſt Papiſts and other non-conformiſts; though perhaps of too ſanguinary a nature to be applauded in modern times. But whoever has read of the Pariſian and Iriſh maſſacres, will probably ſee the neceſſity of keeping under legal reſtraint the profeſſors of a religion who maintain, "That "there is no faith to be kept with heretics;" yet I believe there is hardly a Proteſtant who would be againſt granting them every toleration, provided it could be done without endangering the ſtate. Men of liberal minds give themſelves very little concern about the path which their neighbour purſues to reach the manſions of happineſs.

Elizabeth was extremely cautious in her whole conduct. She probably, or her able adviſers, had penetration enough to diſcern how the power of the kingdom had gradually ſhifted its channel, and wiſdom enough not to provoke the commons to diſcover and feel their ſtrength. She therefore drew a veil over the odious part of prerogative, which ſhe never ſtrained, but only to anſwer ſome important purpoſe; and though the royal treaſury no longer

longer overflowed with the wealth of the clergy, which had been all granted out, and had contributed to enrich the people, ſhe aſked for ſupplies with ſuch moderation, and managed them with ſo much œconomy, that the commons were happy in obliging her.—Her capacity for government has been juſtly celebrated by all hiſtorians. She was certainly a woman of a maſculine underſtanding and ſpirit, which laſt quality ſometimes broke out into blows upon her maids of honour and courtiers; yet never did a prince ſo long and ſo entirely, for the ſpace of half a century together, reign in the affections of the people: though poſterity, by unanimous conſent agree, that ſhe was guilty of an unparallelled act of blood againſt her couſin and neighbour, Mary Queen of Scotland; not ſo much through neceſſity as to gratify her jealouſy and rage againſt an unhappy princeſs, who far ſurpaſſed her in the beauty of her perſon, the elegance of her manners, and in all thoſe accompliſhments which captivate the hearts of the other ſex.

However, conſidering the reign of Queen Elizabeth in a great and political view, we have no reaſon to regret many ſubſequent alterarions

terations in the Engliſh conſtitution. For, though in general ſhe was a wiſe and excellent princeſs, and loved her people—though in her time trade flouriſhed and riches increaſed, the laws were duly adminiſtered, the nation was reſpected abroad and the people happy at home—yet the increaſe of the power of the ſtar-chamber, and the erection of the high-commiſſion court in matters eccleſiaſtical, were the work of her reign. She alſo kept her parliaments at a very awful diſtance, and in many particulars ſhe, at times, would carry the prerogative as high as her moſt arbitrary predeceſſors. It is true, ſhe very ſeldom exerted this prerogative ſo as to oppreſs individuals; but ſtill ſhe had it to exert: and therefore the felicity of her reign depended more on her want of opportunity and inclination, than want of power to play the tyrant. This is a high encomium on her merit, but at the ſame time it is ſufficient to ſhow, that theſe were not the golden days of genuine liberty; for ſurely the true liberty of the ſubject conſiſts not ſo much in the gracious behaviour, as in the limited power of the ſovereign.

THE END.

E. E. F. Jn.
11/17/62